

**SEMINOLE NATION
CODE OF LAWS**

**TITLE 13A
CHAPTER TWO**

SECTION 100	. AUTHORITY.....	1
SECTION 101	. APPLICABILITY.....	1
SECTION 102	. MARRIAGE IS A CONTRACT.	1
SECTION 103	. WHO MAY CONTRACT; MARRIAGEABLE AGE.	2
SECTION 104	WHO MAY NOT CONTRACT; INVALID OR PROHIBITED MARRIAGES.....	2
SECTION 105	. IDENTIFICATION OF PARTIES.	2
SECTION 106	. MARRIAGE LICENSE.....	3
SECTION 107	. FEE.	3
SECTION 108	. SOLEMNIZATION OF MARRIAGE CONTRACT.	3
SECTION 109	. COMMON LAW MARRIAGE.....	3
SECTION 110	. GROUNDS FOR ANNULMENT OR VOIDABLE MARRIAGE.....	3
SECTION 111	. DELIVERY AND FILING OF MARRIAGE CERTIFICATE.....	4
SECTION 200	. AUTHORITY.....	4
SECTION 201	. PURPOSE AND CONSTRUCTION.	4
SECTION 202	. PETITION AND RESPONSE.....	4
SECTION 203	. PROHIBITED ACTS DURING THE PENDENCY OF DIVORCE.	5
SECTION 204	. JUDGMENT OF DIVORCE.....	6

SECTION 205	. IRRETRIEVABLE BREAKDOWN.	7
SECTION 206	. ACTIONS OF THE COURT PENDING DIVORCE.	7
SECTION 207	. PROVISION FOR JUDGMENT.	8
SECTION 208	.REVISION OF LEGAL CUSTODY AND PHYSICAL PLACEMENT ORDER.	10
SECTION 209	. EFFECT OF JUDGMENT.	12
SECTION 210	. VISITATION RIGHTS OF CERTAIN PERSONS.....	12
SECTION 211	. FEES.	12
SECTION 300	. AUTHORITY.	13
SECTION 301	. GENERAL.....	13
SECTION 302	. POLICY.....	13
SECTION 303	. DEFINITIONS.....	14
SECTION 304	. TRIBAL ENROLLMENT RECORDS.....	15
SECTION 305	. JURISDICTION.	15
SECTION 306	. PROCEDURES - GENERAL.	16
SECTION 307	. SUMMONS.	16
SECTION 308	. HEARINGS.	17
SECTION 309	SERVICE OF DOCUMENTS OTHER THAN SUMMONS AND PETITION.....	18
SECTION 310	EVIDENCE AND BURDEN OF PROOF.	18
SECTION 311	RECOGNITION AND ENFORCEMENT OF OTHER COURTS' ORDERS.....	18
SECTION 312	TRANSFER OF JURISDICTION.....	19

SECTION 313	. GENERAL.....	19
SECTION 314	. FOREIGN PATERNITY ORDERS AND AFFIDAVITS.	20
SECTION 315	. PATERNITY PETITIONS.....	20
SECTION 316	. GENETIC TEST.....	21
SECTION 317	. PATERNITY HEARINGS.....	22
SECTION 318	. PATERNITY ORDERS.	24
SECTION 319	. DUTY OF CARE AND SUPPORT.	26
SECTION 320	. CHILD SUPPORT ENFORCEMENT AGENCY.....	26
SECTION 321	. CHILD/FAMILY PROTECTION PETITION AND GUARDIANSHIP CASES.....	27
SECTION 322	. PETITION FOR CHILD SUPPORT.....	27
SECTION 323	. DOCUMENTS AND NOTICE TO CHILD SUPPORT AGENCY.....	28
SECTION 324	. INITIAL CHILD SUPPORT HEARING.....	29
SECTION 325	. PROPOSED AGREED ORDERS.....	32
SECTION 326	. ESTABLISHMENT OF CHILD SUPPORT OBLIGATION.	33
SECTION 327	. FINDINGS OF FACT AND CONCLUSIONS OF LAW.....	33
SECTION 328	. CHILD SUPPORT ORDER.....	34
SECTION 329	. DEFAULT CHILD SUPPORT ORDERS.....	36
SECTION 330	. MODIFICATION OF FOREIGN COURT CHILD SUPPORT ORDERS.....	36
SECTION 331	. ENFORCEMENT OF CHILD SUPPORT ORDERS.	37
SECTION 332	. TRANSFER/ASSIGNMENT OF TANF RECIPIENTS' RIGHTS.....	41
SECTION 333	. DISTRIBUTION OF CHILD SUPPORT PAYMENTS.	42

SECTION 334	. REDUCTION OF PAST CHILD SUPPORT OWED.....	43
SECTION 335	. CHILD SUPPORT GUIDELINES.....	46
SECTION 336	. CHILD SUPPORT SCHEDULE.....	53
SECTION 337	. CHILD SUPPORT REVIEW HEARINGS.....	54
SECTION 338	. COURT APPEALS.....	55
SECTION 339	. SEVERABILITY.....	55
SECTION 340	. PURPOSE.....	56
SECTION 341	. DEFINITIONS.....	56
SECTION 342	. FOREIGN CHILD SUPPORT ORDER.....	56
SECTION 343	. HEARING.....	57
SECTION 344	. JUDGMENT.....	57
SECTION 345	. MODIFICATION OF A FOREIGN CHILD SUPPORT ORDER.....	57
SECTION 346	. ENFORCEMENT.....	58
SECTION 347	. TERMINATION.....	58
SECTION 400	. AUTHORITY.....	59
SECTION 401	. PURPOSE.....	59
SECTION 402	. DEFINITIONS.....	59
SECTION 403	. APPOINTMENT OF GUARDIAN GENERALLY.....	61
SECTION 404	. TYPES OF GUARDIANSHIPS.....	61
SECTION 405	. GUARDIANSHIP PREFERENCES AND ORDER.....	62
SECTION 406	. GENERAL GUARDIANSHIP DUTIES AND POWERS.....	62

SECTION 407	. LIMITATIONS PLACED ON THE GUARDIAN.	63
SECTION 408	. JURISDICTION.	63
SECTION 409	. INITIATING AN ACTION.....	64
SECTION 410	. SERVICE OF PROCESS.	65
SECTION 411	. ADDITIONAL GUARDIANSHIP PROCEDURES.....	67
SECTION 412	. GUARDIANSHIP HEARING PROCEDURES.....	70
SECTION 413	. DISPOSITION OF PETITION.....	71
SECTION 414	. COURT ORDERS GENERALLY.	71
SECTION 415	. MANAGEMENT OF PROPERTY.	71
SECTION 416	. ANNUAL GUARDIANSHIP REPORT.	72
SECTION 417	. CHILD SUPPORT.....	72
SECTION 418	. VISITATION RIGHTS.	73
SECTION 419	. CO-GUARDIANS.....	73
SECTION 420	. NAME CHANGE.	73
SECTION 421	. JUDGMENTS INOPERATIVE AFTER AGE 18.	73
SECTION 422	. MOTIONS TO MODIFY GUARDIANSHIP.	73
SECTION 423	. MOTIONS TO REVOKE GUARDIANSHIP.....	74
SECTION 424	. MOTIONS TO REMOVE GUARDIAN.....	75
SECTION 425	. MOTIONS TO TERMINATE GUARDIANSHIP ORDERS.	75
SECTION 426	. SUCCESSOR GUARDIAN.	76
SECTION 427	. COURT APPEALS.....	77

**SEMINOLE NATION
CODE OF LAWS**

TITLE 13A

**Chapter Two
SUBCHAPTER A**

DOMESTIC RELATIONS CODE

SECTION 100. Authority.

Article V, Section 2(a) of the Seminole Nation Constitution grants the Legislature the power to make laws, including codes, Titles, resolutions, and statutes.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 101. Applicability.

(a) This Title authorizes the Seminole Nation District Court (Court) to issue marriage licenses and perform marriages in which one or both parties to the marriage is a member of the Seminole Nation or resides within the jurisdiction of the Seminole Nation; or where one or both parties are Native American.

(b) The procedures set forth herein shall be exclusive as to any marriage performed by the Court in the Nation's jurisdiction, in which one or both parties are members of the Seminole Nation.

(c) There is concurrent jurisdiction with the procedures established by the law of the state of Oklahoma as to any marriage performed within the Nation's jurisdiction in which one party is not a member of the Seminole Nation or does not reside in the Nation's jurisdiction. The completion of an application for a marriage license under this Title constitutes the nonmember's consent to the Nation's jurisdiction to grant such a license.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 102. Marriage is a Contract.

Marriage under this law is a civil contract to which the consent of the parties capable in law of contracting is essential, and which creates the legal status of husband and wife.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 103. Who may Contract; Marriageable Age.

- (a) Any person who has attained the age of 18 years may marry if otherwise competent.
- (b) Any person between the age of 16 and 18 may marry with the written consent of the person's parents, legal guardian or custodian.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 104. Who may not Contract; Invalid or Prohibited Marriages.

- (a) No marriages shall be contracted while either of the parties is lawfully married to another person.
- (b) Persons closer in relationships than fourth cousins may not marry.
- (c) Persons may not marry where there exists a lawful objection or insurmountable impediment as perceived by the District Court, including but not limited to marring within a tradition clan or other traditional prohibition against marriage.
- (d) A marriage may not be contracted if either party is not capable of understanding what it means to agree to become married.
- (e) No person who is or has been a party to an action for divorce in any court may marry again until six (6) months after judgment of divorce is granted, and the marriage of any such person solemnized before the expiration of six (6) months from the date of the granting of judgment of divorce shall be void.
- (f) Person of the same gender will not be allowed to marry or divorce.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 105. Identification of Parties.

- (a) A person under the age of 30 must present proof of age by presenting a certified copy of his or her birth certificate or enrollment card.
- (b) Each party to the marriage must present satisfactory documentary proof of identification and residence.
- (c) Each party to the marriage must present satisfactory copies of documents providing proof that they are free to marry, such as proof of death of previous spouses or proof of divorce or annulment of previous marriages.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 106. Marriage License.

A marriage license shall be issued by the Seminole Nation District Court upon receiving a completed application form from unmarried persons and in the absence of any showing that the proposed marriage would be invalid under any provisions of this Title.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 107. Fee.

A fee shall be for the issuance of marriage licenses is \$40.00.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 108. Solemnization of Marriage Contract.

A marriage shall be validly solemnized and contracted by a Seminole Nation District Court Judge or Supreme Court Justice, in the presence of at least two competent adult witnesses, after the issuance of license and by the mutual declarations of the two parties involved that they agree to become husband and wife.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 109. Common Law Marriage.

Seminole Nation law recognizes marital cohabitation between a male and female who have resided together for at least seven (7) years or more and shall enjoy the same legal treatment as partners who formalized their marital relationship in Section 108.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 110. Grounds for Annulment or Voidable Marriage.

(a) A marriage may be voided or annulled by the District Court for any one of the following reasons upon the application of one of the parties to marriage:

- (1) When either party to the marriage was incapable of consenting thereto.
- (2) When the consent was obtained by force or fraud.
- (3) When either party was, at the time of the marriage, incapable of consummating the marriage and the incapacity is continuing.
- (4) When the marriage was invalid on one of the grounds set forth in Section 104.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 111. Delivery and Filing of Marriage Certificate.

The marriage document, legibly and completely filled out in ink shall be returned by the Officiating person or by the parties to the marriage contract to the Seminole Nation District Court within 10 days after the date of marriage.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SUBCHAPTER B
DIVORCE AND CUSTODY

SECTION 200. Authority.

Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, Titles, resolution, and statutes.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 201. Purpose and Construction.

The Seminole Nation District Court is authorized to dissolve a marriage by divorce when the parties are incompatible for any reason when either party is a resident of the Seminole Nation for at least six (6) months or is a member of the Seminole Nation who has resided within the state of Oklahoma for at least six (6) months.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 202. Petition and Response.

(a) Except as otherwise provided, in dissolution of marriage action the petition shall state:

- (1) The name and birth date of the parties, the social security numbers of the husband and wife and their occupations, the date and place of marriage and the facts relating to the residence of both parties.
- (2) The name and birth date of each minor child of the parties and each other born to the wife during the marriage, and whether the wife is pregnant.
- (3) That the marriage is irretrievably broken or that the parties agree it is irretrievably broken.
- (4) Whether or not an action for divorce or legal separation by either of the parties was or has been at any time commenced, or is pending in any other court or before any judge, in the state of Oklahoma, in another tribal court, or elsewhere.

(5) Whether the parties have entered into any written agreement as to support, legal custody and physical placement of the children, maintenance of either party and property division; and if so, the written agreement shall be attached.

(6) The relief requested.

(7) That during the pendency of the action, the parties are prohibited from, and may be held in contempt of court for, harassing, intimidating, physically abusing or imposing any restraint on the person liberty of the other party or a minor child of either party.

(8) That during the pendency of the action, without the consent of the other party or an order from the Court, the parties are prohibited from, and may be held in contempt of court for, encumbering, concealing, damaging, destroying, transferring, or otherwise disposing of property owned by either or both of the parties, except in the usual course of business, in order to secure necessities or in order to pay reasonable costs and expenses of the action, including attorney fees.

(9) That during the pendency of the action, the parties are prohibited from, and may be held in contempt of court for, doing any of the following without the consent of the other party or an order of the Court:

a. Establishing a residence with a minor child of the parties outside the state of Oklahoma or more than 150 miles from the residence of the other party within the state.

b. Removing a minor child of the parties from the state of Oklahoma without consent of custodial parent.

(b) Either or both parties to the marriage may initiate the action. The party initiating the action or his or her attorneys or advocates shall sign the petition. Both parties or their respective attorneys or advocates shall sign a joint petition if the parties are filing together.

(c) The summons shall be in the form of a regular summons used by the District Court for civil cases.

(d) Service shall be made in accordance with regular court procedures. If only one party initiates the action, the other party may serve a response and/or counterclaim within 20 business days after the date of service.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 203. Prohibited Acts During the Pendency of Divorce.

(a) In an action for divorce, the petitioner upon filing the petition, the joint petitioners upon filing the joint petition and the respondent upon service of the petition are prohibited from doing any of the following:

(1) Harassing, intimidating, physically abusing or imposing any restraint on the personal liberty of the other party or a minor child of either of the parties.

(2) Encumbering, concealing, damaging, destroying, transferring, or otherwise disposing of property owned by either or both of the parties, except in the usual course of business, in order to secure necessities or in order to pay reasonable costs and expenses of the action, including attorney fees.

(3) Without the consent of the other party or an order of the Court, establishing a residence with a minor child of the parties outside the state of Oklahoma or more than 150 miles from the residence of the other party within the state, removing a minor child of the parties from the state Oklahoma for more than 90 consecutive days.

(b) The prohibitions listed in this section shall apply until the action is dismissed, until a final judgment in the action is entered or until the Court orders otherwise.

(c) Any person violating the provisions of this section will be subject to the regular contempt provision in the Seminole Nation Code of Laws.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 204. Judgment of Divorce

(a) The District Court shall grant a judgment of divorce if:

(1) The requirements of this Title as to marriage counseling have been complied with and the Court finds that the marriage is irretrievably broken under Section 205. This is not required if the parties have been living separately for 12 months or longer or if the Court otherwise waives the marriage counseling requirement.

(2) To the extent it has jurisdiction to do so, the Court has considered, approved, or made provision under Section 207 for legal custody and physical placement of any minor children of the marriage, the support of any child of the marriage entitled to support, the maintenance of either spouse, the support of the family and the disposition of property.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 205. Irretrievable Breakdown.

(a) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or if the parties voluntarily lived apart continuously for twelve (12) months or more immediately prior to commencement of the divorce action and one party had so started, the Court, after hearing, shall make a finding that the marriage is irretrievably broken.

(b) If the parties have not voluntarily lived apart for at least twelve (12) months immediately prior to commencement of the action and if only one party had stated under oath or affirmation that the marriage is irretrievably broken, the Court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation.

(1) If the Court finds no reasonable prospect of reconciliation, it shall make a finding that the marriage is irretrievably broken; or

(2) If the Court finds that there is a reasonable prospect of reconciliation, it shall continue the matter for further hearing not fewer than thirty (30) nor more than sixty (60) days later, or as soon thereafter as the matter may be reached on the Court's calendar, and may suggest to the parties that they seek counseling. The Court, at the request of either party or on its own motion, may order counseling. At the adjourned hearing, if either party states under oath or affirmation that the marriage is irretrievably broken, the Court shall make a finding that the marriage is irretrievably broken.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 206. Actions of the Court Pending Divorce.

(a) The District Court may order:

(1) The husband and wife to provide for the separate maintenance of his or her spouse and children as the Court may deem just upon application therefore or in the disposition of a divorce proceeding.

(2) The care, custody and maintenance of the minor child of the marriage during the pendency of the proceedings.

(3) The restraint of either spouse from, in any manner, molesting or interfering with the other or the minor children.

(4) The restraint and enjoining of either spouse or both from disposing of their individually or jointly owned property during the pendency of the action except as approved by the Court.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 207. Provision for Judgment.

(a) In addition to voiding or dissolving the marriage, the Court shall have the power to impose judgment as follows:

(1) Custody.

a. For the future legal custody and physical placement and care of the minor children of the marriage as may be in the best interest of the children and in accordance with Section 208.

b. Approve any agreement between the parties as to the legal custody and physical placement and care of minor children if deemed by the Court to be in the best interests of the children.

(2) For the recovery from either spouse to allow for the care and support of the minor children an amount of money as may be just and proper for the party to contribute toward their education and support.

(3) For the recovery from either spouse an amount of money or other personal property as may be just and proper for the maintenance of the other.

a. In considering an order under this subsection, the Court shall consider the following:

(i.) The length of marriage.

(ii.) The age and physical and emotional health of the parties.

(iii.) The division of property made under paragraph e, below.

(iv.) The education level of each party at the time of marriage and at the time the action is commenced.

(v.) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

(vi.) The feasibility that the party seeking maintenance can become self-supporting as a standard of living reasonably comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal.

(vii.) The tax consequences to each party.

(viii.) Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial service contributions to the other with the expectation of reciprocation or other compensation in the future, where such repayment has not been made, or any mutual agreement made by

the parties before or during the marriage concerning any arrangement for the financial support of the parties.

(ix.) The contribution by one party to the education, training or increased earning power of the other.

(x.) Such other factors as the Court may in each individual case determine to be relevant.

(4) Property Division. For the approval of any property settlement between the parties or recovery and delivery to each of the parties any of their personal property in the possession or control of the other at the time of the giving of the judgment.

a. Except as provided in paragraph (2), below, any property shown to have been acquired by either party prior to or during the course of the marriage in any of the following ways shall remain the property of that party and is not subject to a property division under this paragraph e.

(i.) A gift from a person other than the other party.

(ii.) By reason of the death of another, including, but not limited to life insurance proceeds; payments made under a deferred employment benefit plan, of an individual retirement account; a property acquired by right of survivorship, by a trust distribution, by bequest or inheritance or by a payable on death or a transfer in death arrangement.

(iii.)

(iv.) (c) With funds acquired in a manner under paragraphs (a) or (b), above.

(v.)

(vi.) (d) A per capita or other payment received by a party other than the spouse.

(5) The Court shall presume that all property not described in paragraph (1), above, is to be equally divided between the parties, but may alter this distribution without regard to marital misconduct after considering all of the following:

a. The length of the marriage.

b. The property brought to the marriage by each party.

c. Whether one party has substantial assets not subject to division by the Court.

d. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.

e. The age and physical and emotional health of the parties.

f. The contribution by one party to the education, training or increased earning power of the other.

g. The earning capacity of the party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

h. The desirability of awarding the family home or the right to live therein for a reasonable period to the party having physical placement for the greater period of time.

i. The tax consequences to each party.

j. Any written agreement made by the parties before or during the marriage concerning any arrangements for property distribution; such agreements shall be binding upon the parties.

(6) No party awarded joint legal custody may take any action inconsistent with any applicable physical placement order, unless the Court expressly authorizes that action.

(7) In an order for physical placement, the Court shall specify the right of each party to the physical control of the child in sufficient detail to enable a party deprived of that control to implement any law providing relief for interference with custody or parental rights.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 208. Revision of Legal Custody and Physical Placement Order.

The following provisions are applicable to modifications of legal custody and physical placement orders:

(a) Substantial Modifications.

(1) Within 2 Years After Initial Order. Except as provided under paragraph b, below, a Court may not modify any of the following orders before 2 years after the initial order is entered, unless a party seeking the modification, upon petition, motion, or order to show cause shows by substantial evidence that the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child:

a. An order of legal custody.

b. An order of physical placement if the modification would substantially alter the time a parent may spend with his or her child.

(2) After 2-Year Period.

a. Except as provided under paragraph (1), above, and paragraph b, below, upon petition, motion or order to show cause by a party, a court may modify an order of legal custody or an order of physical placement where the modification would substantially alter the time a parent may spend with his or her child if the Court finds all the other following:

(i.) The modification is in the best interest of the child.

(ii.) There has been a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.

b. With respect to paragraph (a), above, there is a rebuttable presumption that:

(i.) Continuing the current allocation of decision-making under a legal custody order is in the best interest of the child.

(ii.) Continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child.

c. A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under paragraph a., above.

(b) Modification of Substantially Equal Physical Placement Orders.

Notwithstanding paragraph a, above.

(1) If the parties have substantially equal periods of physical placement pursuant to a court order and circumstances make it impractical for the parties to continue to have substantially equal physical placement, a court, upon petition, motion or order to show cause by a party, may modify such an order if it is in the best interest of the child.

(2) In any case in which paragraph (1), above, does not apply and in which the parties have substantially equal periods of physical placement pursuant to a court order, a court, upon petition, motion or order to show cause of a party may modify such an order based on the appropriate standard under paragraph a, above. However, under paragraph a(2)(b), above, there is a rebuttable presumption that having substantially equal periods of physical placement is in the best interest of the child. **b. Modifications of Other Physical Placement Order.** Except as provided under paragraphs a and b, above, upon petition, motion or order to show cause by a party, a court may modify an order of physical placement which does not substantially alter the amount of time a parent may spend with his or her child if the Court finds that the modification is in the best interest of the child.

(c) Reasons for Modification. If either party opposes modification or termination of a legal custody or physical placement order under this section, the Court shall state, in writing, its reasons for the modification or termination.

(d) Notice. No court may enter an order for modification under this section until notice of the petition, motion or order to show cause requesting modification has been given to the child's parents, if they can be found, and to any relative or agency having custody of the child.

(e) Transfer to Social Services. The Court may order custody transferred to the Department of Social Services only if that department agrees to accept custody based on Title 19, the Seminole Nation Juvenile Code.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 209. Effect of Judgment.

(a) In any action affecting the family under this Title, if the court orders maintenance payment or other allowances for a party or children or retains jurisdiction in such matters, the written judgment shall include a provision that disobedience of the court order with respect to the same is punishable in accordance with the Seminole Nation Child Support Enforcement Code, Chapter 3 of this Title, until such judgment is complied with.

(b) The Court has the power to vacate or modify the judgment of sufficient cause shown upon its own motion, or upon the application of both parties to the action, at any time within six (6) months from the granting of such judgment. If the judgment is vacated it shall restore the parties to the marital relation that existed before the granting of such judgment.

(c) When a judgment of divorce is granted it shall be effective immediately.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 210. Visitation Rights of Certain Persons.

Upon petition by a grandparent, great-grandparent, stepparent or person who has maintained a relationship similar to a parent-child relationship with the child, the Court may grant reasonable visitation rights to that person if the parents have notice of the hearing and if the Court determined that visitation is in the best interest of the child. Whenever possible, in making a determination under this section, the Court shall consider the wishes of the child.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 211. Fees.

The filing fee for a petition for dissolution of marriage shall be set by the Court.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SUBCHAPTER C
CHILD SUPPORT ENFORCEMENT
GENERAL PROVISIONS AND DEFINITIONS

SECTION 300. Authority.

The Seminole Nation General Council authorizes and requires the enforcement and collection of child support on behalf of Seminole children pursuant to this code.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 301. General.

Seminole Nation parents have a responsibility for caring for their children, bonding with them, making sure they are safe, and providing for all their basic needs. Aunts, uncles, grandparents and other extended family members help parents and their children when they need help by advising the parents in decision-making, showing love to the children, teaching values and respect, and taking over in parents' absence. Grandparents share with their grandchildren the wisdom of their experience and traditional values. The Seminole Nation District Court is the most appropriate forum for deciding issues related to the well-being of a child who is a member of a Seminole Nation family. It is the policy of the Seminole Nation to consider carefully the circumstances of each family and to treat each family individually.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 302. Policy.

- (a) The Seminole Nation implements this Child Support Enforcement Code by establishing a Child Support Enforcement Agency (Agency) or the Seminole Nation may contract for such services, or both.
- (b) The Seminole Nation shall promote cooperation and agreement by the parents regarding fulfillment of their duties to their children. It is the experience of the Seminole Nation that a non-custodial parent is more likely to remain connected with his or her children if he or she has developed an agreement with the other parent on the amount of child support.
- (c) The Nation shall not interfere in child support arrangements agreed upon by families when those agreements serve the best interests of the child.
- (d) The Seminole Nation Child Support Enforcement Agency is authorized to certify that there is good cause not to establish paternity or child support in cases in which it is not in the best interests of the child to do so.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 303. Definitions.

When the words listed in this section appear in this title, they shall have the following meaning unless a different meaning is clearly intended.

- (a) "Adult" means any person who is either eighteen (18) years of age or older, married, or emancipated.
- (b) "Agency" means the Seminole Nation Child Support Enforcement Agency.
- (c) "Alleged father" means any man who might be the biological father of a child, including men who are "presumed fathers" under Section 317(d).
- (d) "Child" means a natural child or an adopted child, except that under Subchapter C of this Title, Paternity, "child" refers only to a natural child.
- (e) "Child Support Obligation" means the total dollar amount of child support, including payment of work-related day care expenses and the child's share of health insurance, that the paying party is obliged to pay to meet his or her current financial duty to support his or her child. It also includes any non-cash services or resources the party is required to provide.
- (f) "Court" means the Seminole Nation District Court.
- (g) "Domicile" means permanent home. Home is the location where a person has family, community, cultural, ancestral and historical ties and the place to which a person intends to return.
- (h) "Extended Family" does not have a precise definition. Under Seminole custom, there are formal and informal ties which bind the community. Extended family ties are based on blood lines, marriage, friendship, and caring regardless of blood relationship. Although grandparents (including great and great-great), aunts, uncles, siblings, cousins, in-laws, and step relations are all extended family, any member of the Nation who is reliable, responsible, loving and willing to care for a child may be considered extended family.
- (i) "Guidelines" mean the Seminole Nation Child Support Guidelines.
- (j) "Indian Tribe" means any Tribe, band, nation, or Alaska Native group recognized by the Secretary of the Interior as eligible for services provided to Indians.
- (k) "Nation" means the Seminole Nation.
- (l) "Parent" includes biological or adoptive parent, but does not include persons whose parental rights have been terminated. It does not include an unwed father who has not acknowledged or established paternity in one the following ways: being identified as the father on the child's birth certificate, by acknowledging paternity to the Office of Tribal Enrollment or to a court, or through formal paternity proceedings under state or Nation law.
- (m) "Schedule" means the Seminole Nation Child Support Schedule.
- (n) "Spokesperson" means a person authorized to speak on behalf of a Seminole person for a specific hearing in Court.

- (o) "TANF" means Temporary Assistance for Needy Families Program.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SUBCHAPTER D JURISDICTION AND COURT PROCEDURES

SECTION 304. Tribal Enrollment Records.

- (a) Enrollment of all children eligible for membership in the Seminole Nation is essential to the survival of the Tribe, the furtherance of tribal sovereignty, and rights of future generations of potentially eligible children. In order to encourage acknowledgement of paternity for enrollment purposes, all enrollment records, including birth certificates, are confidential and are not subject to subpoena by any court.
- (b) This Code vests no jurisdiction in the Court over tribal enrollment, but DNA test results and paternity findings which result in a need for correction of Seminole Nation enrollment records may be forwarded to the Office of Tribal Enrollment and Committee on Tribal Enrollment as necessary.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 305. Jurisdiction.

- (a) The Seminole Nation District Court is vested with the fullest jurisdiction permissible under applicable law. Personal jurisdiction includes, but is not limited to the following people.
- (1) Members of the Seminole Nation.
 - (2) Individuals personally served with a summons on the Nation's lands.
 - (3) Individuals who consent to the jurisdiction of the Court by entering a general appearance or filing a responsive document or by participating in the proceeding unless participation is for the purpose of contesting jurisdiction.
 - (4) Individuals who resided on Nation lands with a child who is the subject of the proceeding.
 - (5) Any individual who had a duty to, and failed to, support a child who:
 - a. Resides on Nation land; or
 - b. Is a member of a Seminole family.
- (b) In every action under this Code, the Court shall retain continuing, exclusive jurisdiction over the child to the fullest extent permitted by law.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 306. Procedures - General.

- (a) Proceedings under this Code are civil actions and are governed by applicable provisions of the Seminole Nation Rules of Civil Procedure, except where this Code provides otherwise.
- (b) There is no right to a jury in any proceeding under this Code.
- (c) Any Seminole person appearing in the Court shall have the right, at his own expense, to a spokesperson, lay advocate, or attorney, as allowed under Seminole Nation Rules of Civil Procedure, or to proceed *pro se*. Any other person shall have the right to an attorney at his own expense or may proceed *pro se*.
- (d) Filing Fee:
 - (1) A filing fee of \$25.00 shall be submitted with a petition.
 - (2) When one case involves proceedings under more than one chapter of this Code, there shall be only one filing fee.
 - (3) The filing fee may be waived by the Court in its discretion upon good cause shown.
- (e) Petition
 - (1) Petitions shall be prepared on forms approved by the Court.
 - (2) The parties may both sign a petition so long as each signature is notarized, and by doing so, waive the requirements of service of summons.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 307. Summons.

- (a) Service of Summons. After a petition is filed, the petitioner shall cause the respondent to be served with a copy of the petition on a form approved by the Court. The Court must cause the respondent to be served with a summons indicating the hearing date.
 - (1) Personal Service. Personal service may be effected by personally delivering a copy of the complaint to a person of suitable age and discretion at the residence of the person to be served, with directions to deliver it to the person to be served. Service must be made by a person over the age of eighteen (18) years, who is not a party to the action, nor a member of a party's immediate family.
 - (2) Service by Mail. If the person cannot be found within the Nation's lands, service may be accomplished by certified mail, return receipt requested.
 - (3) Service by Publication.
 - a. When the respondent cannot be found within the Nation's lands and attempts to serve the respondent by certified mail have failed, the petitioner may ask the judge to allow service by publication. If the request

is granted, the petitioner shall follow the following procedures. (i) Publish the summons for two consecutive publications of the *Cokv Tvlvme* or publish for four consecutive weeks in a newspaper of general circulation in the county of residence of the respondent, if known.

b. If service by publication is permitted, the Court may permit extended time deadlines for default orders and for hearings in order to provide for fair notice and opportunity for the respondent to respond.

(b) Content.

(1) The summons shall notify the respondent that if he does not appear or respond to the petition within twenty (20) days from the date of service (or within sixty (60) days of the date of publication if service is by publication) the Court may proceed without the respondent.

(2) The summons shall contain notice of the date of the hearing.

(c) Proof of Service.

(1) The person serving the summons and petition shall file with the Court certification that he has served the respondent, including the date and place of service. If service was made on a person other than the respondent, the certification shall state the name of the person served, the date and place of service, the instructions given, and the signature of the person receiving the summons.

(2) In case of service by certified mail, the return receipt shall be filed with the Court and shall constitute the proof of service.

(3) In case of service by publication, an affidavit by the publisher and a copy of the summons as published shall constitute the proof of service.

(d) Response. Except for joint petitions, within twenty (20) calendar days after the respondent is served with a copy of the petition (or within sixty (60) days if service was by publication), the respondent shall either:

(1) File a written response or contact the Court and state whether he or she will appear in Court to respond to the petition; or

(2) File his or her own response on a form approved by the Court.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 308. Hearings.

(a) Initial Hearing. When the Court receives a petition, it shall set a hearing date which shall not be more than thirty-five (35) calendar days after the petition was filed, unless otherwise provided in this Subchapter or unless continued for good cause.

(b) Notice. The Court shall issue notices of hearing to all parties.

- (1) Initial Hearing. Notice shall be given at least twenty (20) calendar days before the hearing. This notice shall be contained in the summons and served with the petition.
- (2) Hearings for Temporary Orders. Notice shall be given at least five (5) calendar days before the hearing or such time as the Court feels is necessary to respond to the motion.
- (3) Hearings for Emergency Restraining Orders. No notice is required before a hearing for emergency restraining orders under this Code.
- (4) Other Hearings. Notice shall be given at least twenty (20) calendar days before the hearing, except that the Court may shorten the time for responding if justice so requires.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 309. Service of Documents Other than Summons and Petition.

Except as otherwise provided in this Subchapter, every document which is required or allowed to be served on a person shall be given by any of the following:

- (a) Personal service in the same manner provided in Section 307(a) for service of the petition.
- (b) Certified mail with return receipt requested, first class U.S. mail.
- (c) Any other method approved in advance by the Court.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 310. Evidence and Burden of Proof.

Unless additional rules are stated in each chapter, rules of evidence and burden of proof shall be the same as those which apply to civil actions before the Seminole Nation District Court.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 311. Recognition and Enforcement of Other Courts' Orders.

- (a) See *Recognition of Foreign Child Support Orders*, Chapter 3, Subchapter E of this Title.
- (b) The Court may give recognition to the court or administrative orders, judgments or decrees of other Indian nations and tribes, states or federal agencies as a matter of comity (courtesy).
- (c) Certified foreign orders may be given recognition provided that:

- (1) The order does not violate the Indian Child Welfare Act;
 - (2) The court granting the order had jurisdiction over the case and the parties;
 - (3) The parties were afforded due process of law; and
 - (4) The order does not violate the public policy of the Seminole Nation
- (d) A maximum withholding of 60% of the payor's income may be withheld.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 312. Transfer of Jurisdiction.

- (a) The Agency has the authority to accept electronic transfers of cases from within the state of Oklahoma. The Court has the authority to accept transfers of cases from other courts or governments for proceedings under this Code.
- (b) The Court shall only transfer a case under this Code to another court or government if it has no jurisdiction over the case or for compelling reasons determined in a hearing.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SUBCHAPTER E
PATERNITY

SECTION 313. General.

This Subchapter provides a process for the Court to establish the paternity of a child.

- (a) In the Seminole Nation, fathers are important role models who teach respect, values, and responsibilities to their children. They care for their children, show them love and point them in the right direction. They support their children in having a safe, secure, healthy, spiritual, happy home life as well as supporting them financially.
- (b) The Nation recognizes that determining biological paternity is important for purposes of tribal membership and the benefits associated with it. This Subchapter is not intended to take the place of or interfere with confidential acknowledgments of paternity through the Seminole Nation Office of Tribal Enrollment.
- (c) A paternity proceeding under this chapter may stand alone as a separate proceeding or it may be joined with an action to determine child support at the request of the alleged father or the child's mother.
- (d) The provisions of this chapter may be applied, as far as practicable, to the determination of the existence or nonexistence of a mother and child relationship.
- (e) Confidentiality of Paternity Records. The records filed in a paternity action shall be sealed. Only parties to the case may obtain copies.

- (f) No Statute of Limitations. An action to establish paternity shall not be subject to a statute of limitations.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 314. Foreign Paternity Orders and Affidavits.

- (a) A court paternity order from another jurisdiction which established paternity will only be recognized by the Seminole Nation District Court if it meets the requirements of Section 311. Paternity orders entered by default shall not be recognized.
- (b) The Court shall not recognize a state affidavit of paternity if:
- (1) It was signed by a minor who did not understand the consequences of signing the affidavit; or
 - (2) There is evidence of duress, mistake, or unfair procedure.
- (c) A petition for establishment of paternity may be filed in the Seminole Nation District Court even if a state paternity affidavit has been signed or an order regarding paternity has been issued by another court when the petitioner believes that the other process was unfair.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 315. Paternity Petitions.

- (a) **Who May File.** A petition requesting the Court to establish paternity may be filed by any of the following.
- (1) A child (including an adult "child"), or if the child is under the age of 18, the child's legal guardian.
 - (2) The child's natural mother.
 - (3) An alleged father of the child.
 - (4) The Seminole Nation Enrollment Committee, when it has reason to believe that the child's birth certificate or affidavit of paternity is irregular or unreliable.
- (b) **Contents.** A petition to establish paternity, prepared on a form approved by the Court, shall state the following information.
- (1) The names, ages, addresses, and tribal affiliations, if any, of the natural mother, the alleged father(s), the child, all others who have legal rights of custody, visitation or support of the child, and of the petitioner.
 - (2) Whether the natural mother and the alleged father are or were married, and the dates of marriage, separation and divorce, if any.
 - (3) Whether the natural mother and alleged father agree that the alleged father is the natural father of the child.

- (4) Whether there have been any other court or administrative paternity proceedings or state paternity affidavits concerning the child, and whether there have been any termination of parental rights or adoption proceedings.
- (5) A certified copy of the child's birth certificate shall be attached to the petition.
- (6) Whether or not a name change for the child is requested.
- (c) Service of Summons. The natural mother, the child's legal guardian, the adult child, and each man alleged to be the natural father shall be served with a summons and the petition in accordance with Section 307(a) and be notified of all hearings in accordance with Section 308 and provided the opportunity to respond.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 316. Genetic Test.

- (a) The Court may, or at the request of a party shall, require the child, mother and alleged father(s) to submit to genetic tests. An alleged father may be excused from the requirement of genetic tests if the Court determines that there is no reasonable possibility that sexual contact occurred at or near the time of conception. Exceptions to this section are also contained in paragraph c, below.
- (b) The following requirements apply to genetic testing under this section.
 - (1) The tests shall be performed by an accredited paternity genetic testing lab, approved by the Nation that performs legally and medically acceptable tests.
 - (2) The mother shall notify the genetic testing laboratory if she and any of the alleged fathers have a common ancestor or if there is another possible father who is closely related to the alleged father.
 - (3) The party receiving the copy of the genetic test results from the expert shall file them with the Court who shall send all parties a copy of the test results by certified mail, return receipt requested.
 - (4) Unless a party objects to the results of genetic tests in writing at least five (5) days before the hearing, the tests shall be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity.
 - (5) The results of genetic tests must be accompanied by an affidavit from the expert describing the expert's qualifications and analyzing and interpreting the results as well as documentation of the chain of custody of the genetic samples.
 - (6) Failure to submit to genetic tests when required by the Court may constitute contempt of court.
- (c) Good Cause Not to Reveal Father's Identity. A woman may be excused from submitting to genetic testing or from identifying or locating the father of her child when there is good cause not to reveal his identity or location. The Court may hold a closed, ex-parte hearing to determine whether good cause exists. "Good cause" may include, but is not limited to the following.

- (1) Cases involving domestic violence.
- (2) Cases involving incest or rape.
- (3) Cases where identification of the father is not in the best interest of child.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 317. Paternity Hearings.

- (a) The Court has jurisdiction to decide the issues before it whether or not all the alleged fathers participate in the hearing.
- (b) The following rules apply to paternity hearings.
 - (1) Paternity hearings shall be closed unless all parties agree otherwise.
 - (2) The mother of the child and the alleged father(s) may be compelled to testify at the paternity hearing.
 - (3) Testimony of a health care provider concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged for purposes of admitting this evidence at the paternity hearing.
 - (4) If the Petition contains a request that the child's name be changed, the Court shall hear testimony on this issue.
 - (5) The parties shall provide testimony on how the costs of paternity testing shall be paid. If the testing was paid by the Nation, it may waive all or part of the costs or request reimbursement.
- (c) Evidence and Burden of Proof.
 - (1) The burden of proof shall be the same as that applied to civil actions before the Seminole Nation District Court (clear and convincing).
 - (2) The Court may consider the following types of evidence in paternity cases.
 - a. Genetic test results.
 - b. Evidence of sexual intercourse between the mother and an alleged father(s) at any possible time of conception.
 - c. An expert's opinion concerning the statistical probability of an alleged father's paternity, based upon the duration of the mother's pregnancy.
 - d. Medical or anthropological evidence relating to an alleged father's paternity of the child based on tests which may be ordered by the Court and performed by experts.
 - e. Reputation in the community as to paternity.

f. Any other reliable evidence which is relevant to the issue of paternity of the child, except that confidential Seminole Nation enrollment affidavits of paternity shall only be admissible when offered by the man who signed the affidavit. If the father is deceased, the Enrollment Committee may file a confidential enrollment affidavit of paternity with the Court if the Committee, in its sole discretion, deems it to be in the child's best interest.

(d) Presumptions. The following are conclusive presumptions in paternity cases that can be overcome only by clear and convincing evidence.

(1) Presumption as to Whether a Child is Marital or Non-Marital. Genetic testing which establishes a ninety-nine percent (99%) or greater probability of paternity.

(2) Presumption of Paternity Based on Acknowledgment. A man is presumed to be the natural father of a child if he and the mother have acknowledged, by affidavit, paternity and no other man is presumed to be the father.

(3) Presumption as to Time of Conception. In any paternity proceeding, in the absence of a valid birth certificate indicating the birth weight, the mother shall be competent to testify as to the birth weight of the child whose paternity is at issue, and where the child whose paternity is at issue weighed 5 1/2 pounds or more at the time of its birth, the testimony of the mother as to the weight shall be presumptive evidence that the child was a full term child, unless competent evidence to the contrary is presented to the Court. The conception of the child shall be presumed to have occurred within a span of time extending from 240 days to 300 days before the date of its birth, unless competent evidence to the contrary is presented to the Court.

(4) Presumption of Paternity Based on Marriage of the Parties.

a. A man is presumed to be the natural father of a child if any of the following applies:

(i.) He and the child's natural mother are or have been married to each other and the child is conceived or born after marriage and before the granting of a decree of legal separation, annulment or divorce between the parties.

(ii.) He and the child's natural mother were married to each other after the child was born but he and the child's natural mother had a relationship with one another during the period of time within which the child was conceived and no other man has been adjudicated to be the father or presumed to be the father of the child under paragraph (a), above.

b. In a legal action or proceeding, a presumption under paragraph a., above, is rebutted by results of a genetic test that show that a man other

than the man presumed to be the father under paragraph a., above, is not excluded as the father of the child and that the statistical probability of the man's parentage is 99.0% or higher, even if the man presumed to be the father under paragraph a., above, is unavailable to submit to genetic tests.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 318. Paternity Orders.

(a) Default Orders.

(1) Paternity orders entered by default are against the public policy of the Seminole Nation.

(2) Reimbursement of Child Support Paid Erroneously. When a man has paid child support as the father of a child and the paternity of a different man is established later by the Court based on genetic testing, the Court may order reimbursement of the child support that was paid erroneously only if:

- a. The child support payments were retained by a state or tribal government under a permanent assignment of public assistance benefits;
- b. Notice of the hearing has been served on the appropriate government agency;
- c. The government agency that received and retained the payment is the party ordered to make the reimbursement; and
- d. Reimbursement extends back to the date the man can prove he attempted to contest the child support obligation or eighteen months, whichever is longer.

(b) Agreed Paternity Order.

(1) The parties may submit an agreed order establishing the paternity of a child. Before deciding whether to approve the agreed order, the judge shall hold an in-chambers, ex-parte discussion individually with each party to:

- a. Explain the proposed agreed order in detail and the consequences of the order and of the person's failure to comply with agreed terms;
- b. Assure that the person's consent to the proposed agreed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;
- c. Explain the person's right to a spokesperson, lay advocate, or attorney;
- d. Explain the burden of proof as to each issue; and
- e. Explain that once the person agrees to the proposed order and it is signed and entered by the Court, it will be too late for the person to change his or her mind.

(2) The in-chambers conversation need not be recorded. If the party wants a friend, family member or other person to be present, the judge shall allow it after first speaking alone with the party. If the Court finds that any consent was not truly voluntary, the agreed order shall not be entered and the case shall proceed to a hearing.

(c) **Proceedings Involving Another Jurisdiction.**

(1) If the Court cannot obtain personal jurisdiction over the natural mother or an alleged father and finds that it cannot make a determination of paternity without that person, the Court may take any of the following actions.

a. Request the Agency to have another tribe or state require the person to submit to genetic tests performed by an expert in paternity genetic testing.

b. Request a tribunal of another tribe or state to require the person to respond to an order by the Court the person to submit to genetic tests performed by an expert in paternity genetic testing.

c. Forward the case to a tribunal of another tribe or state for the sole purpose of determining paternity.

(2) The Court shall retain exclusive, continuing jurisdiction over the case for custody, visitation, child support and all other issues to the fullest extent permissible under applicable law.

(3) Temporary Orders. Pending determination of the paternity issue, the Court may make a temporary order regarding custody and support of the child.

(d) **Final Paternity Order.**

(1) The decision of the Court shall be final for purposes of appeal under the Seminole Nation Rules of Appellate Procedure.

(2) The order determining the existence or nonexistence of the parent-child relationship shall be effective for all purposes. The Court shall provide the Office of Tribal Enrollment with a copy of the paternity order if necessary. A paternity order may be accompanied by any order, temporary or final, authorized by the provisions of the applicable chapter.

(3) Name Change, Amended Birth Certificate.

a. The Court may authorize that the child's name be changed.

b. If the finding of paternity or the child's new name varies from the child's birth certificate, the Court shall order that an amended birth certificate be issued.

(e) Disestablishment of Paternity. As a matter of policy, the Seminole Nation discourages the disestablishment of paternity.

(1) The proceedings in this Subchapter may be used to disestablish paternity. The limits on who may file an action as stated in Section 315(a) apply to disestablishment proceedings.

(2) The Court shall require the party challenging a paternity which has been legally acknowledged to show that it is in the best interests of the child to change the status quo, prior to Court orders or permits genetic testing. Except, that if it is the Seminole Nation Committee on Tribal Enrollment that is the party challenging a paternity that has been legally acknowledged, the Committee must show it is in the best interest of the Tribe to change the status quo.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SUBCHAPTER F CHILD SUPPORT

SECTION 319. Duty of Care and Support.

(a) Parents have a duty to care for their children. This applies to all natural parents whose parental rights have not been terminated and to all adoptive parents. This duty includes providing love, guidance, education, a safe and healthy environment and financial support. Parents also have a duty to ensure that Seminole children have an opportunity to learn about and participate in the Seminole Way. This includes access to Seminole family and participation in Seminole Nation events.

(b) The purpose of this chapter is to provide a process that ensures that the basic financial needs of children are met when their parents do not live together. In the Seminole Nation, children are cared for by parents, extended family and the community. This chapter focuses on parents' financial duty to their children.

(c) Stepparents do not have a legal duty to support stepchildren but may have a moral and traditional duty to contribute to their support.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 320. Child Support Enforcement Agency.

The Agency operates on a child-centered, agreement-based process. The Agency shall perform the following responsibilities:

(a) Ensure that assistance is made available to parents in developing agreements for child support and health insurance. Parents may obtain these services before they file a petition or they may be referred by the Court.

(b) Prepare a recommendation about the child support and health insurance obligation for each case, using a form developed by the Agency. In making its recommendation, the Agency shall be guided by the Child Support Guidelines (Guidelines) (Section 335) and

the Seminole Nation Child Support Schedule (Schedule) (Section 336). The Agency's recommendation shall be filed with the petition whenever possible; and

(c) May represent the interests of the child in child support enforcement proceedings, as provided in Section 331(b)(1).

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 321. Child/Family Protection Petition and Guardianship Cases.

This chapter may serve as a guide for establishment of child support in Child/Family Protection Petition and Guardianship cases.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 322. Petition for Child Support.

(a) Who May File.

(1) A parent may file a petition for establishment of child support under this Subchapter. The petition shall be prepared on a form approved by the Court. The child support petition may be filed as a separate proceeding or in connection with any of the following petitions.

- a. Divorce or invalidity of marriage.
- b. Paternity.
- c. Child custody.

(b) Contents. A petition for establishment of child support shall contain all of the following:

- (1) The name, address, tribal affiliation, date and place of birth, and social security number of the petitioner, the responding party and the child for whom support is requested.
- (2) The child support obligation requested or agreed upon.
- (3) The proposed provision of health insurance for the child.
- (4) Any proposed work-related day care or extraordinary medical expenses.
- (5) The date proposed for the child support obligation to begin and when it is proposed to terminate.
- (6) The proposed frequency of payment.
- (7) A statement whether child support payments should be made by wage withholding and per capita distribution, or by direct payment, and to whom payments should be made if not the Agency.

- (8) A proposed Parenting Plan (See Section 108, Title 43, Oklahoma Statutes, for guidelines for preparing a Parenting Plan), if any, or, if custody is shared, the percentage of a year that each parent has physical custody of the child.
- (9) A statement that the petitioner swears that he or she believes that the male party is the father of the child; or a statement that the parties agree that the male party is the father of the child.
- (10) A statement whether any of the following proceedings involving the parents or the child are pending or have taken place in any court or administrative agency, and if so, the date, name and place of the Court or agency.
- a. Child custody proceeding.
 - b. Child support proceeding.
 - c. Paternity establishment or disestablishment proceeding.
 - d. Proceeding requesting a domestic violence protective order or no-contact order.
 - e. Proceeding requesting a restraining order involving the child or a party.
- (11) A statement whether either parent has ever received state or tribal public assistance, and if so, the date(s) and name of the state or tribe providing assistance.
- (12) Financial information, as provided in Section 324(e).
- (13) Authorization for the release of all financial records to the Seminole Nation Court and the Agency.
- (14) A statement of which parent should be allowed to claim the child as a dependent for income tax purposes.
- (15) The recommendation of the Agency regarding child support and health insurance coverage.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 323. Documents and Notice to Child Support Agency.

The Court shall provide the Agency with a copy of the petition, response, financial information and all other documents filed in a child support case and it shall provide the Agency with notice of all hearings in a child support case.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 324. **Initial Child Support Hearing.**

(a) When the Court receives a petition, it shall set a hearing date which shall not be more than thirty five (35) calendar days after the petition was received, unless continued for good cause.

(b) Notice of Hearing. The date, time and place of the initial hearing shall be contained in the Summons. Notice of the hearing shall be served on the parties and the Agency.

(c) Service of Child Support Petition and Summons.

(1) After a petition is filed, the petitioner shall cause the respondent to be served with a copy of the petition on a form approved by the Court. The Court must cause the respondent to be served with a summons indicating the hearing date.

(2) The petition and summons shall be served as provided in Section 307(a).

(3) The parties may both sign a petition so long as each signature is notarized, and by doing so, waive the requirements of service of summons.

(4) Summons.

a. Content. The summons prepared on a form approved by the Court shall notify the respondent that if he or she does not appear or respond to the petition within twenty (20) days from the date of service or within sixty (60) days of the date of publication, if service is by publication, the Court may proceed without the respondent and a default judgment may be entered without his or her participation.

b. Service.

(i.) The person serving the summons and petition shall file with the Court certification that he or she has served the respondent, including the date and place of service. If service was made on a person other than the respondent, the certification shall state the name of the person served, the date and place of service, and the instructions given.

(ii.) In case of service by certified mail, the return receipt shall be filed with the Court and shall constitute the proof of service. In case of service by publication, an affidavit by the person causing the notice to be published and a copy of the summons as published shall constitute the proof of service.

(d) Response.

(1) Unless the parties have filed a joint petition, the respondent shall file his or her response within twenty (20) calendar days after the respondent is served with a copy of the petition, or within sixty (60) days if service was by publication. The response shall include financial information as provided in Section 324(e) and authorization for the release of all financial records to the Seminole Nation Child

Support Enforcement Agency and the Seminole Nation Court. The respondent may also file a proposed Parenting Plan.

(2) The respondent shall cause the response, including financial information, to be served on the petitioner as provided in Section 307(d).

(3) Paternity at Issue.

a. If the respondent disagrees or is unsure that he is the father of the child, he shall state this fact in his response.

b. If the parties do not agree about paternity, either party may request that paternity be established. Upon the request of either party, the Court shall continue the child support proceeding pending establishment of paternity, as provided in Subchapter C. If the parties do not agree about paternity and neither party requests paternity establishment, the Court shall dismiss the child support petition.

(e) Financial Disclosure.

(1) The parties shall provide complete disclosure of financial information, including verification of all income and resources, to the Court and to the Agency.

(2) Financial information shall be provided on forms approved by the Court. It shall be submitted with the petition or response.

(3) Penalty. Failure to provide required financial disclosure may be grounds for contempt of court.

(4) Financial Disclosure Confidentiality. Financial information filed with the Court or provided to the Agency and information shall be confidential and available only to the parties, the Court and the Agency, and solely for the purpose of establishing paternity, or establishing, modifying, enforcing or distributing child support.

(5) A party is not required to provide his or her financial information as part of the Court record, provided the party has made full and complete financial disclosure to the Agency and that the Agency has certified that it has reviewed the financial information and its recommendation is based upon that information.

(f) Limited Statutory Waiver of Confidentiality. The following entities are authorized and required to provide information regarding a party's income, resources and address to the Agency:

(1) Departments of the Seminole Nation.

(2) Seminole Nation Housing and Community Development Agency.

(3) Tribal enterprises.

(4) Any person or entity doing business on lands under the jurisdiction of the Seminole Nation.

(5) Any Temporary Aid to Needy Families (TANF) Program, which shall also provide the following information about a party's TANF assistance:

- a. Whether the person receives or has ever received TANF assistance.
 - b. The names of other people on the person's TANF grant.
 - c. The dates of the assistance.
 - d. The amount of assistance.
- (g) Domestic Violence Victim Protection.
 - (1) The Agency is authorized to request information from off-reservation employers, government agencies and other entities.
 - (2) The Agency and the Court shall take whatever steps are necessary to ensure that the address or location of a victim of domestic violence is kept confidential.
- (h) Conduct of the Hearing.
 - (1) Who May Attend. Only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this Subchapter. Any Seminole person appearing in the Court shall have the right, at his own expense, to a spokesperson, lay advocate, or attorney, as allowed under Seminole Nation Rules of Civil Procedure, or to proceed *pro se*. Any other person shall have the right to an attorney at his own expense or may proceed *pro se*. The Agency staff may be present at child support hearings. If a party wants a friend, family member or other person to be present, the Court may allow it.
 - (2) The Court shall review the documents filed in the case, hear the testimony of each party, and consider any other evidence presented. It shall consider and give great weight to the recommendation of the Agency, if any.
 - (3) If an Agency staff person is not available, the Court may either base its decision on the Agency's written recommendation or issue a temporary order and continue the case until Agency staff is available for a hearing. The temporary order terminates when the final order is entered or when the petition is dismissed.
 - (4) If a party believes the Agency's recommendation or the Child Support Schedule (Section 336) is inappropriate as applied to him or her, the burden of proof shall rest on that party to prove that the support obligation should be different than the recommendation or the Schedule.
 - (5) The Court may continue the case at any point pending referral of the parties to the Agency, if appropriate.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 325. Proposed Agreed Orders.

(a) General.

- (1) (1) The parties may agree to a proposed order which resolves some or all of the issues regarding establishment or modification of the child support obligation. The parties may agree that the male party is the father of the child.
- (2) The parties may request the Agency to assist them to develop an agreed order.
- (3) A proposed agreed order shall be filed with the Court at or prior to the hearing.

(b) Hearing for Proposed Agreed Order.

- (1) The Court shall approve a complete agreed order if the Agency does not object, the Court has reason to believe the agreement was truly voluntary, and the agreed order contains all the provisions required by Sections 327 and 328.
- (2) Temporary Order. If the agreed order addresses some but not all of the required issues, the Court may approve the partial agreement and, if sufficient information is available, consider the remaining issues. If a complete order cannot be issued with the information available, the case shall be continued. The parties may be ordered to meet with the Agency, if appropriate. The Court shall establish a time frame for the filing of the remainder of each party's proposal and the Agency's additional recommendation. The Court may enter a temporary order based on the Seminole Nation Child Support Guidelines (Section 335) and the Schedule. The case will then proceed to a hearing on the remaining issues. The temporary order terminates when the final order is entered or when the petition is dismissed.
- (3) The Court may hold in-chambers, ex parte discussions with each party to insure that they understand the proposed agreed order and to assure that each party's consent to the proposed agreement was not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person. If a party wants a friend, family member, or other person to be present, the Court shall allow it after first speaking alone with the party.
- (4) If the Court finds that the agreement was not truly voluntary, the case shall be continued and the parties shall be ordered to meet separately with the Agency. The Court shall establish a time frame for the filing of each party's proposal and the Agency's recommendation. The Court may enter a temporary order based on the Guidelines and Schedule. The case will then proceed to a full hearing on the issues. The temporary order terminates when the final order is entered or when the petition is dismissed.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 326. Establishment of Child Support Obligation.

The Court shall establish the child support obligation, including providing for health insurance, as follows:

- (a) If the parties have proposed a complete agreed order and the Agency has not objected, the Court shall enter the agreed order.
- (b) If the parties have proposed a partial agreed order and the Agency has not objected, the Court may adopt temporary agreed order and, for the remaining issues, it may either:
 - (1) Adopt the Agency recommendation, if any; or
 - (2) Hear evidence and establish the child support obligation by applying the Guidelines and Schedule to the circumstances of the parties.
- (c) If the Court finds reason not to accept all or part of the recommendation of the Agency, or if there is no such recommendation or proposed agreement, the Court shall hear evidence and establish the child support obligation by applying the Guidelines and Schedule to the circumstances of the parties.
- (d) When the paying party owes past child support under a previous child support order, the Court shall order an additional amount of child support to be paid each month on the past child support debt. The total monthly amount ordered shall not exceed the upper limit of the Schedule's range for the paying party's income, unless the parties agree.
- (e) Regardless of paragraphs a through c, above, the Court shall adopt the method of payment (wage withholding, per capita, or direct payment) requested by the party who will pay child support; except that if evidence is presented that the paying party has a history of non-payment of child support, the Court may order wage withholding or require the party to request his or her employer to withhold wages to pay the required child support.
- (f) If a party requests that child support payments be made directly to a parent, the Court shall take testimony on how the parties intend to keep records of the direct payments so that the paying parent is credited with making each payment.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 327. Findings of Fact and Conclusions of Law.

After the hearing, the Court shall enter findings of fact and conclusions of law and a separate child support order. The findings of fact and conclusions of law shall include findings and conclusions regarding:

- (a) The Court's subject matter jurisdiction over the case.
- (b) The Court's personal jurisdiction over all the parties.
- (c) The paternity of the child.

- (d) The child support obligation of one or both parties, as agreed by the parties or, in the absence of agreement, as calculated using a form recommended by the Seminole Nation Child Support Enforcement Agency and approved by the Court in accordance with the Guidelines and Schedule.
- (e) If the child support obligation deviates from the scheduled range for the paying party's income, the amount of support that would have been required and a justification as to why that amount is unjust or inappropriate.
- (f) If the child support obligation is based on shared physical custody, the percentage of the year the child resides with each party.
- (g) Date the child support obligation begins.
- (h) The frequency of child support payments.
- (i) If child support is to be established during the period prior to filing the child support petition, the recommendation of the Agency regarding duration and amount of pre-filing child support.
- (j) Circumstances under which the child support obligation will terminate.
- (k) To whom or to what entity child support payments are to be made.
- (l) How records will be kept of child support payments received if payment is not made to the Agency.
- (m) How child support payments may be enforced if necessary, and the following information.
 - (1) Paying party's employer's name and address.
 - (2) Assets which could be attached if necessary for enforcement.
 - (3) Whether there is a spouse entitled to protection in case of Federal Income Tax Refund Offset.
- (n) Previous child support orders applicable to the paying party or any of the children.
- (o) The amount of any previous child support owed.
- (p) In default child support cases, facts supporting service of the petition, summons and notice to respondent.
- (q) The extent to which the order differs from the recommendation of the Agency.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 328. Child Support Order.

- (a) The child support order shall include the following.
- (b) A statement that the Court has jurisdiction over the case.
- (c) A statement that the Court shall have continuing, exclusive jurisdiction over the welfare of the child, including child support and modification of the order.

- (d) A statement that the male party is the legal father of the child, if the parties so agree and paternity has not been previously established. If paternity has been previously established, the child support order does not need to address paternity. The Nation does not recognize default paternity orders.
- (e) The child support obligation of one or both parties, to include the following.
 - (1) The amount of cash to be paid to the other party.
 - (2) The amount of the cash payment which is allocated to work related day care or health insurance, if any.
 - (3) The amount of non-cash services or resources to be provided to the other party, if any.
 - (4) The amount to be paid to third parties for day care, health insurance or extraordinary expenses, if any.
- (f) The date the child support obligation begins.
- (g) The frequency of child support payments.
- (h) The duration and amount of any pre-filing child support obligation, as provided in Section 335(h).
- (i) A statement regarding the circumstances under which the child support obligation will terminate, as provided in Section 335(i).
- (j) A statement whether child support payments will be made by wage withholding, per capita, or by direct payment to the Agency or other entity, as provided in Section 335(i), and a provision for record keeping if payment is not made to the Agency.
- (k) The amount of any credit against the child support obligation for benefits paid directly to the child, as provided in paragraph Section 335(j).
- (l) The amount of past child support owing on a previous child support order, if any, and provision for making payment of that debt, as provided in Section 326(d).
- (m) A statement that each parent shall notify the Agency of any change of employer or change of address within ten (10) days of the change.
- (n) The date for a review hearings three (3) months after the order is issued and a statement that thereafter review hearings shall be scheduled every twelve (12) months after the order is issued, as provided in Section 337.
- (o) A detailed description of the enforcement actions that may be taken in the event the parent owing child support fails to comply with the order.
- (p) The child support order is final for purposes of appeal.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 329. Default Child Support Orders.

(a) When the respondent fails to appear or otherwise defend, the petitioner may file a motion, supported by an affidavit, for a default child support order. The Court does not have the authority to enter a default order of paternity. The Court may enter a default child support order upon finding the following:

(1) The Court has jurisdiction over the subject matter of the case and over the respondent.

(2) The respondent was given proper service of the petition and summons and proper notice of the hearing.

(3) The petitioner has stated, under oath, that he or she believes that the male party is the father of the child.

(4) The petition or the recommendation of the Agency or the financial information, support establishment of respondent's obligation at the amount provided for in the default judgment. The amount shall be determined under the Guidelines and Schedule based on calculation of income as provided in Section 335(d).

(b) Notice of the default order shall be served on the respondent.

(c) The Court may set aside a default child support order upon a showing of good cause.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 330. Modification of Foreign Court Child Support Orders.

(a) Seminole Nation Child Support Orders.

(1) When there has been a substantial change in the income of the paying party or other factors that determined the original child support obligation, a party may request, by motion, modification of a Court child support order.

(2) A motion for a modification of child support shall be accompanied by an affidavit setting forth the factual basis for the motion and the modification requested.

(3) Both parties shall file updated financial information forms at least ten (10) days before the modification hearing, except that:

a. In agreed modification orders no financial information need be filed with the Court; and

b. A party is not required to provide his or her financial information as part of the Court record provided the party has made full and complete financial disclosure to the Agency has certified that it has reviewed the

financial information and its recommendation is based upon that information.

(4) Child support orders may be modified for future support only. Amounts of past due support shall not be modified except as provided in Section 334.

(b) Foreign Child Support Orders. See Subchapter E of this Chapter, Recognition of Foreign Child Support Orders.

(c) Foreign Child Support Administrative Orders.

(1) A child support order of the Seminole Nation District Court supersedes an administrative order of another nation, state or tribe.

(2) If a party wishes to have a Seminole Nation District Court child support order replace a foreign administrative child support order, he or she may file a child support petition including all the information set forth in Section 322, as well as a copy of the foreign administrative order.

(3) The Seminole Nation child support order shall address all time periods covered by the foreign administrative order.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 331. Enforcement of Child Support Orders.

(a) The Court may enforce a child support order by ordering wage withholding or other means of enforcement at the following hearings:

(1) An Enforcement Hearing if a child support obligation is at least thirty (30) days overdue in an amount equal to one month's child support obligation or if there is a history of non-compliance; or

(2) A regularly scheduled Review Hearing if child support is overdue at the time of the review hearing or if there is a history of noncompliance with the order. See Section 337.

(b) Enforcement Hearings.

(1) Filing. A motion for an enforcement hearing may be filed only by either:

a. A parent; or

b. The Agency, representing the interests of the child in receiving child support, in any case involving another tribe or state or the Seminole Nation Indian Child Welfare Program.

(2) Affidavit. The motion shall be supported by an affidavit containing the following:

a. Terms of the child support order to be enforced.

- b. Length of time the child support obligation has been overdue, which must be at least 30 days or facts supporting a history of non-compliance.
- c. Amount of child support that is overdue, which must be equal to one month's child support obligation.

(3) Agency Recommendation. The Agency shall file a recommendation regarding appropriate enforcement action in every case filed by a parent. In a case filed by the Agency, the recommendation shall be included in the Agency's motion for the enforcement hearing.

(4) Hearing Notice. The notice for the enforcement hearing shall be served as provided in Section 307(d) and Sections 308 and 323, and shall contain the following information.

- a. Copy of the motion and affidavit.
- b. The time and date of the hearing.
- c. Notice that if the parent owing support fails to attend the hearing, wage withholding or other enforcement action will be ordered.

(5) Procedures. At the enforcement hearing the Court shall review the affidavit and any supporting documents, hear the testimony of each party, consider any other evidence presented, and consider and give great weight to the recommendation of the Agency, if any.

(6) Burden of Proof.

- a. If the moving party meets the burden of proving that the child support obligation is at least 30 days overdue in an amount equal to one month's child support obligation or that the party has a history of non-compliance, the Court shall order wage withholding, as provided in Section 331(c), or other means of enforcement, as provided in Section 331(d).
- b. If the moving party does not meet the burden of proof, the Court shall dismiss the motion.

(c) Wage Withholding.

(1) At a Review Hearing or at an Enforcement Hearing, wage withholding shall be the primary means of enforcement of a child support order where a parent receives wages, unless:

- a. The parties agree in writing to alternate arrangements which the Court approves;
- b. The party owing child support works for a Tribe or a tribal enterprise that has not waived its sovereign immunity for that purpose, in which case the Court shall order that party to arrange wage withholding of child support with his or her employer;

- c. The parent owing child support demonstrates good cause not to require immediate wage withholding; or
- d. The Court finds that another means of enforcement would be more effective.

(2) **Wage Withholding Order or Request.**

All Garnishments must comply with the Nation's Civil Procedure requirements and may provide for the following as long as not inconsistent with the Nation's Civil Procedure Code:

- a. A wage withholding order shall not exceed the upper limit of the Seminole Nation Child Support Schedule's range for the paying party's income, unless the parties agree. The Court shall order that an additional amount be withheld each month to be applied to past payments owed.
- b. The wage withholding order or request shall include all of the following:
 - (i.) The amount to be withheld and the frequency of the withholding.
 - (ii.) A requirement that the employer send the amount to the Nation within seven (7) business days of the date the paying party is paid.
 - (iii.) A requirement that the employer report to the Agency the date on which the amount was withheld.
 - (iv.) A requirement that the employer remit the amount withheld to the Nation until further notice by the Nation.
 - (v.) A statement that the employer shall notify the Nation promptly when the paying party terminates employment and provide the paying party's last known address and the name and address of the paying party's new employer, if known.

(3) **Procedure.** The Court shall serve the wage withholding order or the party's wage withholding request on the employer or other payer. The Court is authorized to approve wage withholding forms recommended by the Agency.

(4) **Release from Withholding.** The wage withholding order or request shall be effective until the Court or the Agency issues a release or authorizes the party to issue a release.

(5) **Employer Obligations.**

- a. No employer shall refuse to honor a wage withholding order or a party's wage withholding request issued under this chapter. An employer shall begin withholding within seven days after service of the order or request. Failure to withhold wages according to the order or request subjects the employer to liability for the accumulated amount the employer should have withheld.

- b. No employer may discharge, refuse to employ or take disciplinary action against any employee because his or her wages have been subjected to withholding for child support. Failure to comply with this section subjects the employer to a fine to be determined under Seminole law.
- (d) Other Means of Child Support Enforcement. At a Review Hearing or an Enforcement Hearing, the Court may order any of the following actions in addition to or instead of wage withholding:
- (1) A Federal Income Tax Refund Offset may be obtained by the Agency as provided in Section 331(e)(2).
 - (2) Attachment of assets through utilization of the Lien Docket, except that the federal Order to Withhold and Deliver form shall be used where applicable.
 - (3) Interception of federal payments, such as retirement, travel or expense reimbursement.
 - (4) Appearance to explain non-payment.
- (e) Exemptions from Enforcement Actions. In the enforcement of any child support order, the following shall be exempt from execution except as specifically provided as follows:
- (1) Unemployment compensation, TANF benefits, SSI or other Social Security benefits.
 - (2) All wearing apparel of every person in the family except that only \$500 in value in furs, jewelry, beadwork, and personal ornaments for the person owing the child support obligation.
 - (3) Items of bona fide religious or cultural significance.
 - (4) Tools, equipment, boats, gear, vehicles, instruments and materials used by the person to obtain income.
 - (5) Provisions and fuel for the comfortable maintenance of the home for three months.
 - (6) Any real property on Seminole Nation lands.
 - (7) A motor vehicle not exceeding \$2,500 in value.
- (f) Authority of the Child Support Enforcement Agency.
- (1) Implementation. The Agency has the sole authority to arrange for implementation of a child support enforcement order, including wage withholding and other means of enforcement.
 - (2) Federal Income Tax Refund Offset.
 - (i.) The Agency has sole authority for the following actions:
 - (ii.) Receive funds certified by a state under the Federal Income Tax Refund Offset Program and owed on a Seminole Nation child support case.

(iii.) Request that a state certify a Seminole Nation child support case to the Federal Income Tax Refund Offset Program.

(iv.) Certify a Seminole Nation child support case to the Federal Income Tax Refund Offset Program to receive funds for that case.

b. The Agency may offer assistance to help Seminole Nation families file "injured spouse" claims with the Federal Income Tax Refund Offset Program when appropriate.

(g) Failure to Comply with Child Support Order. Failure to comply with a Seminole Nation child support order, including a wage withholding order and a court order to request wage withholding, may be punishable as contempt of court.

(h) Custody and Visitation Rights. If a party fails to comply with a child support order or a provision in a Parenting Plan, the other party's obligations under the Parenting Plan or child support order are not affected. This means that a party cannot withhold visitation if the other party doesn't pay child support.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 332. Transfer/Assignment of TANF Recipients' Rights.

(a) The child support rights of a child who receives tribal TANF are transferred (assigned) to another tribe because the TANF paying tribe is providing support for the child during a time period when child support payments should be helping to support the child. When child support payments are made on an irregular basis, a family has no financial stability.

(b) The TANF paying tribe can assist the family achieve financial independence by providing reliable, predictable TANF assistance while collecting child support owed to the child. When child support payments are made to the TANF tribe through an assignment, the payments are not counted as income of the TANF recipient and therefore they do not cause fluctuations in his or her TANF grant. The paying party's financial connection with the child is maintained through the child support pass-through, where applicable.

(c) Should the Seminole Nation establish a TANF program in the future, a child receiving TANF cash assistance will be affected by his or her rights to past, present and future child support. Support will be deemed to be transferred (assigned) to the Seminole Nation, subject to the limitations set forth in this Subchapter.

(d) When rights are transferred (assigned) to a TANF paying tribe, they are characterized as temporary or permanent as follows.

(1) Temporary Transfer/Assignment. This is the transfer of rights to past child support that became due before the family began receiving TANF cash assistance. The transfer of these rights is temporary, which means that the child support may be collected and held by the TANF paying tribe, but it may not be utilized to reimburse the TANF paying tribe for the child's TANF grant. While it is held by

the TANF paying tribe, it shall not be considered an asset of the family. This transfer terminates when the child stops receiving TANF cash assistance and any temporarily transferred funds collected by the TANF paying tribe shall be paid to the payee under the child support order.

(2) Permanent Transfer/Assignment. This is the transfer of rights to past, present, and future child support becomes due while the family is receiving TANF cash assistance. The transfer of these rights is permanent. The amount of this transfer is limited to the amount of TANF cash assistance received for the child covered by the child support obligation or the child support obligation for that child, whichever is less. This transfer terminates when the child stops receiving TANF cash assistance.

(e) Use of Payments.

(1) Child support payments retained by the TANF paying tribe under a permanent TANF assignment shall be expended for the benefit of the Nation's children and their families.

(2) Pass-Through. Money received by the Nation under a TANF recipient's child support transfer of rights may be used to provide a pass-through payment to that TANF recipient on behalf of the child. Such a pass-through payment shall not be considered income for purposes of TANF eligibility or counted against the amount of the grant. The amount of a uniform pass-through payment to TANF recipients shall be determined by regulation of the Legislature for the Nation's TANF Program.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 333. Distribution of Child Support Payments.

(a) Except as provided in paragraph b, below, child support payments made to the Nation shall be distributed in the following order of preference within each case:

- (1) Payment of current support.
- (2) Payment of the custodian's arrears.
- (3) Payment of transferred/assigned arrears.

(b) Lump-sum payments from Federal Income Tax Refund Offsets shall be distributed in the following order of preference:

- (1) Payment as pass-through to a custodial party receiving Tribal TANF cash assistance, if there is no current child support payment to apply to the pass-through. These payments shall be credited against arrears assigned to the TANF paying tribe.
- (2) Payment of transferred (assigned) arrears.
- (3) Payment of the custodian's arrears.

(c) Distribution to Multiple Payees. If the person with the child support obligation owes child support on more than one case, distribution shall be as follows:

(1) Current Support. If there is not enough to pay all current support owing, the available funds shall be pro-rated to each case according to that case's share of the total current support owing on all cases.

(2) Arrears. If there is money left over after all current support has been paid, the available funds shall be applied to the arrears owing on all cases, pro-rated to each case according to that case's share of the total arrears owed on all cases. Within each case, the money is first applied to any arrears owed the custodian and next to TANF arrears.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 334. Reduction of Past Child Support Owed.

This section allows the Court to forgive back unpaid child support under certain circumstances. The child support policies of outside governments have frequently created hardship for Seminole children and their families; for example, when income is imputed and creates large back debts, when the child's parents reunite and collection action on the past debt takes away resources from the child, when collection action is taken against individuals who are caring for their adult children and grandchildren, and other actions which offend Seminole values of fairness and due process.

(a) Types of Debt Defined.

(1) Debt to Parent or Custodian. A debt of past child support owed to the parent or custodian on behalf of the child may be reduced only by agreement of the parties.

(2) Debt to Tribe or State. A debt of past child support owed to a government for reimbursement for public assistance may be reduced or eliminated as provided in this Code.

(b) Petition. A party who wishes to reduce a debt for past child support may file a petition for Reduction of Past Child Support Debt. The petition shall be prepared on a form approved by the Court and it shall contain the following information:

(1) The name, address, tribal affiliation, date and place of birth and social security number of the petitioner and the child for whose benefit the child support was ordered.

(2) The name, address, tribal affiliation, date and place of birth and social security number of the person to whom the child support is owed or was originally owed.

(3) If the debt is owed to a government for reimbursement for public assistance, the name and address of the appropriate government agency.

- (4) A copy of the child support order under which the debt accumulated.
 - (5) The total amount of the past child support debt.
 - (6) The amount of proposed reduction of the past child support debt.
 - (7) The reason why the past child support debt should be reduced or eliminated.
 - (8) Financial information, as provided in Section 324(e).
 - (9) The recommendation of the Agency.
- (c) Procedure.
- (1) Hearing Date. When the Court receives a petition, it shall set a hearing date which shall not be more than thirty-five (35) calendar days after the petition was received, unless continued for good cause.
 - (2) Notice of Hearing. The date, time and place of the hearing shall be contained in the summons.
 - (3) Service of Petition and Summons. After a petition is filed, the petitioner shall cause the respondent to be served with a copy of the petition and a summons. The petition and summons shall be served as provided in Section 306(e). The parties may sign a petition and by doing so, waive the requirements of service of the petition and summons.
 - a. Summons. The summons, prepared on a form approved by the Court, shall notify the respondent that if he or she does not appear or respond to the petition within twenty (20) days from the date of service or within 60 days of the date of publication if service is by publication, the Court may proceed without the respondent.
 - b. Proof of Service. The person serving the summons and petition shall file with the Court certification that he or she has served the respondent, including the date and place of service. If service was made on a person other than the respondent, the certification shall state the name of the person served, the date and place of service, and the instructions given. In case of service by certified mail, the return receipt shall be filed with the Court and shall constitute the proof of service. In case of service by publication, an affidavit by the person causing publication and a copy of the summons as published shall constitute the proof of service.
 - (4) Response. Unless the parties have filed a joint petition, the respondent shall file his or her response within twenty (20) calendar days after the respondent is served with a copy of the petition, or within sixty (60) days if service was by publication. The respondent shall cause the response to be served on the petitioner as provided in Section 308(b).
 - (5) Notice to Agency. If the past child support debt is owed to a government, notice shall be served on the appropriate agency of that government. The person who assigned the child support rights to the government need not be a party to the hearing if the entire child support debt is owed to the government.

(6) Hearing.

a. The Court shall review the documents filed in the case, hear the testimony of each party, and consider any other evidence presented. It shall consider and give great weight to the recommendation of the Agency, if any.

b. The burden of proof shall rest on the moving party to prove that the support obligation should be reduced, as provided in Section 334(d).

c. If the parties have proposed an agreed order and the Agency has not objected, the Court shall enter the agreed order.

(d) Reduction of Past Support Owed to a Tribe or State. The Court may grant a reduction or complete forgiveness of past support owed to a tribe or state when the past debt was not based on the paying parent's actual income or when payment of the past debt would create substantial hardship.

(1) Substantial hardship shall include either of the following circumstances:

a. The child on whose behalf the past debt accumulated is now living with and being supported by both parents who are reunited.

b. The child on whose behalf the past debt accumulated is now living with and being supported by the party owing the past support debt.

(2) Substantial hardship may include any of the following circumstances:

a. The party owing the past support debt is complying with the current child support obligation for the child on whose behalf the past debt accumulated and he or she has insufficient resources to pay both current and past support.

b. The party owing the past support debt is currently supporting other children, grandchildren or elders and payment of the past support debt would prevent him/her from adequately supporting him/herself and the others.

c. The child on whose behalf the past debt accumulated is over 18 years old and payment of the debt would significantly burden the party's ability to support him/ herself.

(e) Reduction of Past Child Support Owed to a Parent.

(1) When a parent agrees to a reduction or complete forgiveness of past child support owed to him or her, the Court may hold an in-chambers, ex-parte (individual) discussion with this parent to ensure that he or she understands and consents to the proposed agreed order and that the proposed agreement was not the result of coercion, threat, duress, fraud, overreaching, or improper promise.

(2) If the parent wants a friend, family member, or other person to be present, the Court shall allow it, after first speaking alone with the party. If a party is unavailable or chooses not to be at the hearing, he or she may submit an affidavit verifying the agreement.

(f) Findings and Conclusions. After the hearing, the Court shall enter findings of fact and conclusions of law and a separate Reduction of Past Child Support Owed Order. The findings of fact and conclusions of law shall address the following:

- (1) Subject matter jurisdiction.
- (2) Personal jurisdiction over all the parties.
- (3) The total amount of past child support owed and to whom it is owed.
- (4) The basis for the decision, including the agreement of the person to whom the child support debt is owed, if a parent.
- (5) The amount of reduction of past child support, if any.
- (6) The conditions, if any, upon which reduction of the past child support debt is contingent.

(g) Order.

(1) The Agency may recommend, and the Court may fashion an order, making the reduction of past support contingent upon making timely payments of current support as well as timely payments on the arrears not forgiven. It is Seminole Nation policy to attempt to create orders for the reduction of past child support which are most likely to be carried out successfully.

(2) The Reduction of Past Child Support Owed Order shall include the following:

- a. A statement that the Court has jurisdiction over the case.
- b. The total amount of the child support debt.
- c. The amount of reduction of the child support debt.
- d. The conditions, if any, upon which reduction of the past child support debt is contingent.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 335. Child Support Guidelines.

Oklahoma Statutes, for Child Support Percentage of Income Standard, shall apply and may be deviated from at the discretion of the Court.

(a) General.

(1) The Seminole Nation Child Support Guidelines set forth the rules under which a child support obligation is established. They set a standard of adequate support for children subject to the ability of the parents to pay.

(2) The Schedule is the table of levels of cash child support that correspond to the income of the paying party. It is used according to the Guidelines and is intended to provide consistent treatment of individuals in similar circumstances.

- (b) Application. The Guidelines and Schedule are to be applied as follows:
- (1) Parties. The parties may use the Guidelines and Schedule in reaching an agreement.
 - (2) Agency. The Agency shall be guided by the Guidelines and Schedule in assisting the parties to reach agreement. When the parties are not in full agreement on the amount of child support, the Agency shall be guided by the Guidelines and Schedule in making its recommendation to the Court.
 - (3) Court. The Court will generally enter an agreed order, as provided in Section 325 or adopt the Agency's recommendations. In those cases in which the Court does not do so, it shall apply the Guidelines and Schedule to the circumstances of the parties.
- (c) Establishing a Child Support Obligation. A child support obligation is established under the Guidelines and Schedule using the following steps:
- (1) Calculate the monthly income of the party obliged to pay child support and subtract the allowable deductions.
 - (2) Determine the total number of children to whom the party has a duty to support, as provided in paragraph f, below, and find the range in the Schedule which corresponds to the party's income and number of children.
 - (3) Determine the amount within the range that is appropriate to the circumstances of the family, based on the factors listed in paragraph g, below, except for health insurance.
 - (4) Determine any amount of extra child support obligation for months when seasonal income is received, as provided in paragraph g(3), below.
 - (5) Add any additional amount required for health insurance as provided in paragraph l, below, not to exceed the upper limit within the appropriate range.
 - (6) Determine non-cash contributions in appropriate circumstances, as provided in paragraph k, below.
 - (7) Establishment of child support obligation when there is shared physical custody. In the absence of an agreement as to the amount of child support, when the parties each provide a home for the children and the children will spend a significant percentage of the year in each home, the Court may pro-rate the child support obligation between the parties.
- (d) Calculation of Income as Basis for Child Support Obligation. The non-custodial party's obligation shall be based on his or her monthly income less allowable deductions.
- (1) Income means revenue from any source including but not limited to:
 - a. Salaries, wages, tips, commissions, and regular overtime.
 - b. Business income such as sales of goods, services and products, whether legal or illegal.

- c. Deferred compensation.
- d. Income from second jobs.
- e. Predictable, non-recurring income of over \$500 per quarter.
- f. Regular bonuses.
- g. Treaty payments.
- h. Per capita distribution payments.
- i. Lease or rental income.
- j. Compensation received under a contract.
- k. Dividends.
- l. Severance pay.
- m. Pensions.
- n. Interest, trust income, annuities, and capital gains.
- o. Workers compensation benefits and unemployment insurance benefits.

(2) Allowable deductions from income include:

- a. Tribal taxes.
- b. Federal and state income taxes.
- c. Social security (FICA) deductions.
- d. Mandatory pension plan payments.
- e. Union or professional dues.
- f. State industrial insurance premiums.
- g. Normal business expenses allowable under IRS rules.
- h. Normal treaty income business expenses, determined by:
 - (i.) The standard treaty income business expense deduction developed by the applicable tribe; or
 - (ii.) The IRS rules applicable to normal non-treaty business expenses.
 - (iii.) Self-employment taxes for self-employed persons.

(3) Disclosure required for the following, although not included as income:

- a. Social security benefits.
- b. Disability insurance benefits.
- c. Income from a second spouse or other adult in the household.
- d. TANF cash assistance, general assistance benefits, SSI, food stamps or other means-based benefits.

e. Child support received by a parent for the support of other children.

(4) Calculation of Income in Default Cases. In the absence of financial information from the defaulting parent, his or her income shall be based on information provided by the Agency.

(e) Calculation of Child Support When There Are Children From Other Relationships.

(1) When a party has a legal duty to pay child support for children from other relationships, calculation of the amount of the child support per child shall be based on the total number of children from all relationships.

a. If possible, at the time an order is entered, the Court shall modify any existing orders so that they are based on the total number of children from all relationships that the parent has a duty to support.

b. If an existing order cannot be modified at the time the order is entered, the child support obligation for the child before the Court shall be established based on the number of children before the Court, but the monthly obligation for the first six (6) months shall be reduced so that the total child support paid to all persons during that period does not exceed the scheduled amount for the total number of children from all relationships. During this six (6) month period, the Agency shall assist the party to modify the previous child support order(s). The six (6) month period may be continued for good cause. Upon modification of the previous order(s), the Court shall modify its order based on the total number of children from all relationships.

c. If a previous child support order for children from another relationship cannot be modified, the Court shall adjust the child support obligation for the child before the Court so that the total child support paid to all persons does not exceed the scheduled amount for the total number of children from all relationships.

(2) The provisions of this paragraph e, apply only to the extent that the child support obligations for children from other relationships are actually paid.

(f) Adjustments Within Schedule Ranges. A child support obligation established under these Guidelines shall be set within the range provided in the Schedule for the income level of the paying party. In determining the appropriate amount within the range, the factors in this section shall guide the parties' agreement, the Agency and the Court.

(1) Age of Child. The obligation shall be set higher in the range for children 12 years old and older and closer to the lower end of the range for younger children.

(2) Work-related Day Care. The obligation may be set higher in the range to cover the reasonable cost of work-related day care of the custodial parent. This obligation shall terminate if work-related day care is terminated or it shall be

reduced proportionately if the child is in work-related day care for a reduced period of time.

(3) Seasonal Income. If the paying party's income is seasonal, the obligation may be set on a schedule that varies the amount at different times of the year.

(4) Extraordinary Medical Expenses for the Child. The obligation may be set higher in the range to cover extraordinary medical expenses for the child, not covered by health insurance.

(5) Extraordinary Debt Not Voluntarily Incurred. The obligation may be set lower in the range when the party owing support makes payments on extraordinary debt not voluntarily incurred such as court fines.

(6) Use of Non-Cash Services or Resources. The obligation may be set lower in the range when non-cash services or resources are regularly and reliably provided, as set forth in paragraph k, below.

(7) Possession of Wealth. The obligation may be set higher when the parent owing support possesses an abundance of valuable material possessions, resources, money, or has the ability to generate a stream of income that is greater than monthly expenses or even slightly above expenses and purchase whatever material possession the parent may want or need. Luxury items that may equate to the abundance of possessions may include, but are not limited to, expensive homes, cars, boats, all-terrain vehicles, sports equipment, recreational vehicles, camping trailers, vacation homes, additional land/property, and multi-annual vacations.

(g) Period of Obligation.

(1) Prior to Filing.

a. Establishing a child support obligation for a period prior to the date of filing the case in Court is disfavored by the Seminole Nation. This is due to the difficulty in obtaining accurate past financial information and because of the burden on the paying party if the party is also paying current support.

b. There are some circumstances when it is appropriate to have a \$0 or default order for the period before filing.

c. In every case where child support is ordered for any period before filing, there must be a recommendation by the Agency regarding the duration and amount of pre-filing child support.

(2) Termination.

a. A parent's financial duties last until any of the following events:

(i.) The death of the child.

(ii.) The death of the parent obliged to pay support.

(iii.) The child reaches the age of eighteen years old or, if the child is still in high school, until graduation or the child turns nineteen, whichever is earlier.

b. The child support obligation terminates at the end of the month in which the financial duty terminates.

(h) Payment.

(1) Payment of a child support obligation shall be made to the Agency for distribution to the appropriate recipient, as provided in Section 333.

(2) If the Agency becomes aware that a child is no longer living with the person receiving child support on behalf of the child, the Agency or the paying party may request a review hearing to determine to whom the child support payments will be disbursed for the benefit of the child.

(3) If the parties agree or the Court finds it to be in the best interests of the child, it may order:

a. Allowance to Child. A portion of the cash support to be disbursed to the child as an allowance; or

b. Trust or Savings Account. A portion of the cash support to be deposited into a trust or savings account for the benefit of the child under such terms as the Court deems just.

(4) There may be circumstances when payment to the Registry of a state or another tribe would be appropriate. The Agency will identify those circumstances, if applicable.

(i) Credit for Benefits. When a child receives benefit payments such as social security, veterans, or the like, as a result of contributions made by the party with the child support obligation, credit shall be given to offset all or part of the child support obligation, in the amount of the payment. The Court shall indicate in the child support order the total child support obligation and the amount that shall be covered by benefit payments made directly to the child. If the benefit payment is more than the current child support obligation, the difference shall be credited against any arrears that the custodian has not assigned to a government.

(j) Non-Cash Services and Resources. Although consistent with Seminole Nation culture and tradition, non-cash services and resources are difficult to monitor and guarantee. The primary purpose for their use in connection with cash child support is to strengthen the bond between the child and the non-custodial parent. Non-cash services and resources are not a substitute for cash child support obligation.

(1) The non-custodial parent may be ordered to provide non-cash services and resources in connection with the child support obligation under the following circumstances:

a. When the parties agree.

- b. When the non-custodial parent's income is below the minimum income level for ordering cash child support in the Child Support Schedule.
 - c. When the non-custodial parent's income is insufficient to cover the obligation(s) for the total number of children from all relationships.
 - d. When the non-custodial parent is a teenager in school.
 - e. When the non-cash services and resources are regular and reliable so that the obligation may be established lower in the range.
- (2) The child support order shall specify the quantity, quality, condition and frequency of the non-cash services and resources.
- (3) Members of the non-custodial parent's extended family are welcome to contribute non-cash services and resources. They may be credited to the non-custodial parent's obligation if they meet the court's requirements.
- (4) Non-cash services and resources may include, but are not limited to:
 - a. Help with extra sports and school activities or expenses.
 - b. Day care provided by the non-custodial parent.
 - c. School clothes.
 - d. Car or home maintenance or repair.
 - e. Firewood, fish, shellfish, game, or berries, but only by agreement of the parties.
 - f. Tutoring or volunteering at the child's school.
 - g. Transportation to the child's activities.
 - h. Pow Wow regalia.
 - i. Teaching treaty skills or cultural knowledge.
- (k) Health Insurance.
 - (1) The Agency shall make a recommendation as to the best health insurance coverage for the child. The Court shall include provision of health insurance for the child in every child support order.
 - a. When health insurance is available at reasonable cost through one or both party's employment or union, that party (or both parties) shall provide coverage. "Reasonable cost" for the parent with the child support obligation means that when the child's portion of the health insurance premium is added to the basic child support obligation, the total obligation does not exceed the upper limit of the range.
 - b. If health insurance is not available to either party at reasonable cost, a \$0 health insurance order shall be entered. If the child is eligible for health care services through the Nation, another tribe or the Indian Health

Service, one or both parties shall be ordered to cooperate with the appropriate entity to obtain services for the child.

c. Routine medical expenses are included within the Schedule.

(2) The Agency may make arrangements to enroll a child in a health insurance plan, consistent with a court order on health insurance.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 336. Child Support Schedule.

(a) The Child Support Schedule is based on the following:

(1) Specific descriptive and numeric criteria and results in a computation of an amount of child support, which is sufficient to meet the basic needs of a child for housing, clothing, food, education, health care, recreation, and goods and services required by physical or mental disability.

(2) The income of the non-custodial parent and the number of children there is a duty to support.

(b) The Schedule provides for a range of payment levels for each income category. The level shall be adjusted to the circumstances of each case according to the factors set forth in Section 335(f).

(c) Review Requirement. The Schedule shall be reviewed by the Agency every three years and any recommendations for amendment shall be provided to the Legislature.

(d) Child Support Schedule. The Seminole Nation adopts the State of Oklahoma Child Support Schedule unless otherwise adopted by this Court.

(e) Deviation from Schedule.

(1) It is against Nation policy to establish or enforce a non-voluntary child support order outside the range in the Seminole Nation Child Support Schedule that corresponds with the paying party's income level.

(2) The Agency may recommend and the Court may order a child support obligation set under the guidelines which is outside the range in the schedule only if the obligation is supported by agreement of the parties. If the child support order deviates from the range in the schedule, the Court shall enter a written finding stating the amount of support that would have been required under the schedule and justification as to why that amount would be unjust or inappropriate. [For example, it is intended that if the top of the range is \$250 and the parties agree to \$300, the order shall state this.]

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 337. **Child Support Review Hearings.**

(a) **Purpose.** The primary purpose of a child support review hearing is to give the parties and the Court an opportunity to ensure that child support payments are being made as provided in the order. Either party shall the opportunity to:

- (1) Raise questions or concerns they have about a Parenting Plan;
- (2) Move for modification of the child support order; or
- (3) Request payments as provided in paragraphs f and g, below.

(b) **Timing.** A mandatory Review Hearing shall be scheduled three (3) months after the child support order was issued. Thereafter, Review Hearings shall be scheduled every twelve months after the child support order was issued. The date for the first Review Hearing shall be set by the Court at the time the order is issued and no further notice of that hearing is necessary. The Agency shall notify the Court when it is time to schedule the annual Review Hearing for each case. The Court may order additional Review Hearings if it is necessary.

(c) **Waiver.** Except for the first, mandatory review hearing, a review hearing may be waived if both parties file a request to waive the hearing and the Agency agrees to the waiver.

(d) **Enforcement of Child Support Order.** If child support payments have not been made as required by the order, the Agency shall make a recommendation to the Court regarding appropriate enforcement of the child support order. In any case which involves Nation TANF or another tribe or a state, the Agency has the sole authority to raise enforcement issues and represent the interests of the child in receiving child support. If the Court finds that a child support obligation is overdue or if there is a history of non-compliance with the order, the Court shall order wage withholding or other means of enforcement, as provided in Sections 335(c) and 335(d).

(e) **Modification of Child Support Order.** Review hearings are not intended to be annual modification hearings. However, a party may file a motion for modification, as provided in Section 330 prior to the review hearing and, if timely filed, the Court may schedule a hearing on modification at the same time as the review hearing.

(f) **Payment for Extraordinary Medical Expenses.** The Court may order the paying party to make payments in addition to the regular child support payments upon presentation of receipts or other proper proof that the child has had extraordinary medical expenses as provided in Section 335(f)(4). Adjustments may be added to future payments, provided that no total monthly payment may exceed the upper limit of the scheduled range for the income of the paying party.

(g) **Reimbursement.**

- (1) Upon presentation of receipts or other proper proof, the Court may order reimbursement and/or repayment as follows.

a. Reimbursement to the paying party for work-related day care expenses paid but not utilized by the receiving party for work or work-related activities.

b. Repayment to the Nation by the party who received child support on behalf of a child who stopped residing for a month or longer with that party, if payment was originally made to the Nation.

(2) Overpayment reimbursement shall be applied first to arrears owed. If no arrears are owed, the reimbursement may be paid directly or applied as a credit against future support.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 338. Court Appeals.

(a) Any interested party to the Court hearing may appeal a final Court order on a specific legal issue.

(b) Procedure. An appeal to the Nation's Appellate Court may be taken from any order, decree, or judgment of the Court. Such appeal shall be taken in the same manner in which appeals are taken from judgments or decrees of the Court. The notice of appeal must be in writing and taken within thirty (30) days from the entry of the order, decree, or judgment appealed from.

(c) Record For Purpose of Appeal. A record of proceedings shall be made available to the child, his parent, guardian, or custodian, the child's counsel, and others upon Court order. Costs of obtaining this record shall be paid by the party seeking the appeal.

(d) Stay Pending Appeal. The pendency of an appeal shall not stay the order or decree appealed from in a child's case. Where the order or decree appealed from directs a change of legal custody of a child, the appeal shall be heard and decided at the earliest practicable time. The name of the child shall not appear on the record of appeal.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 339. Severability.

If any provision or provisions of this Act in the future be declared invalid by the Judiciary, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

SUBCHAPTER G
RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS

SECTION 340. Purpose.

The purpose of this Subchapter is to provide for the enforcement of child support orders of another tribe, state, or other foreign jurisdiction.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 341. Definitions.

As used in this Subchapter, the following shall have the meaning provided here.

- (a) “Court” means the Nation’s Trial Court.
- (b) “Nation” means the Seminole Nation.
- (c) “Per Capita Payment” means a distribution from the Nation to a member of the Seminole Nation made pursuant to the Nation’s Laws.
- (d) “Petition” means a written order to register and enforce a Child Support Order of another jurisdiction under this Subchapter.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 342. Foreign Child Support Order.

- (a) Motion. Any person, tribe, state, or foreign jurisdiction that wishes to enforce a
- (b) Child Support Order against per capita payments, wages, compensation, or other
- (c) payments from the Nation must apply to the Court by filing a Petition to register and
- (d) enforce a foreign Child Support Order. The Petition shall be accompanied by an
- (e) authorized copy of the Child Support Order.
- (f) The foreign Child Support Order shall recite or be accompanied by documentation showing the jurisdiction of the foreign court or administrative agency, the authority for entering the order, the name of the person/defendant subject to the order and his/her relationship to the child, and the amount of child support.
- (g) Service of Process. The defendant shall be served with a copy of the Petition and
- (h) Child Support Order. Service shall be made in any manner permitted for service of
- (i) process commencing an action in the Court under the Seminole Nation Rules of Civil

- (j) Procedure.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 343. Hearing.

Within twenty (20) days after service of the Petition, the defendant may request a formal hearing regarding the Child Support Order. The hearing shall not review the merits of the Order and shall be limited to issues regarding:

- (a) Whether the foreign court or administrative agency had jurisdiction to enter the
- (b) child support order.
- (c) Whether the defendant had due process including proper notice and a fair hearing.
- (d) Whether collusion, fraud, or clear mistakes of law or fact are present.
- (e) Whether there is conflict with any state or federal law.
- (f) Whether there is a conflict with the Nation's law or public policy.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 344. Judgment.

- (a) Judgment shall either enforce the Child Support Order and grant child support payments or dismiss the motion on one or more of the grounds set forth in Section 343.
- (b) Except as otherwise provided in this section, a judgment shall not allow any modification from the foreign Child Support Order or otherwise change the percentage, agreed amount, or amount if in arrears of child support to be awarded.
- (c) Default Judgment. If the defendant fails to respond within twenty (20) days to the child support Petition, the Court may enter a default judgment granting the relief sought in the Petition.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 345. Modification of a Foreign Child Support Order.

A party may request modification of a foreign child support order by filing a child support petition including all the information set forth in Section 322 of this Title, as well as a copy of the foreign child support order.

- (a) The Court shall refer the modification petition to the Seminole Nation Child Support Agency or contractor for its recommendation.
- (b) The Court may modify an order issued by another nation, state, or tribe if the Tribe has jurisdiction to make a child support order; and

- (1) The court of the other nation, state or tribe no longer has continuing, exclusive jurisdiction of the child support order because that jurisdiction is no longer the child's state or tribe or the residence of any party; or
- (2) Both parties have agreed to the Seminole Nation District Court assuming jurisdiction over the modification.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 346. Enforcement.

(a) The Court may enforce the judgment for child support through an order garnishing the defendant's wages, compensation, or other payments owing from the Nation and any of its enterprises, programs, and projects other than per capita payments to defendant under paragraph b, below.

(b) Enforcement Against Per Capita Payments. Each judgment entered by the Court for child support under this section shall, unless ordered otherwise by the Court based upon its construction of the foreign order and upon receipt by the Department of Treasury and the Office of Tribal Enrollment, constitute a lien upon and assignment of defendant's per capita payments under the Seminole Nation Laws. A judgment received within fifteen (15) days of a per capita payment distribution shall not be effective for that payment, but shall be effective for all subsequent payments.

(1) An order of the Court placing a lien upon and assigning defendant's per capita for child support shall be immediately directed to the Office of Tribal Enrollment and the Department of Treasury of the Nation.

(2) Except as provided in paragraph (3), below, the Department of Treasury must withhold the specified amount from the debtor-parent's per capita payment and transmit such funds directly to the Clerk of Court or the Court's designee. The Clerk of Court shall remit the payments to the claimant if payment is transmitted to the Clerk instead of a designee.

(3) The maximum amount in any one per capita payment check subject to withholding under this Ordinance is sixty percent (60%).

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 347. Termination.

The debtor-parent's obligation to pay child support shall lapse when judgment is satisfied.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SUBCHAPTER H THIRD PARTY GUARDIANSHIP

GENERAL PROVISIONS, POLICIES AND DEFINITIONS

SECTION 400. Authority.

The Seminole Nation authorizes guardianship by third parties (non-parents) under the limited circumstances of this code.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 401. Purpose.

When it appears to the Court to be in the best interest of a child, the Court may appoint guardians for the persons and/or property of children under the Court's jurisdiction who have no guardian, or where there is such instability within the home that the appointment of a guardian would be in the child's best interests. Such appointment may be made on the petition of a proposed guardian or by the minor child if sixteen (16) years of age. Before making such an appointment, the Court must cause such notice as the Court deems reasonable to be given to any person having the care of the child and to such other traditional relatives of the child residing within or without the jurisdiction of the Seminole Nation.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 402. Definitions.

As used in this Chapter, the singular includes the plural and the plural the singular, and the masculine the feminine, when consistent with the intent of this Act. The following definitions apply:

- (a) "Adult" means a person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.
- (b) "Child" means an individual who is not married and has not attained eighteen (18) years of age, or has not been deemed emancipated by the Court.
- (c) "Court" means the Seminole Nation District Court.
- (d) "Crime" means conduct which is prohibited by state, federal, or tribal law and is punishable by fine or imprisonment or both. Conduct punishable by forfeiture alone does not constitute a crime for the purposes of this Act.
- (e) "Guardian Ad Litem" means a person appointed by the Court to represent the child's interests before that Court.
- (f) "Guardian of the Person" means a person appointed by the Court to maintain the care, custody, and control of the person of a minor child.

- (g) “Guardian of Property” means a person appointed by the Court to manage the property of a child.
- (h) “Indian” means any member of a federally recognized American Indian Tribe, Alaska Native, or member of a regional corporation as defined in 43 USC Section 1606.
- (i) “Legal Custody” means the authority to make those major life decisions, such as the right to consent to marriage, to enlist in the Armed Forces, to make education decisions, and to consent to major medical, surgical, or psychiatric treatment, and as may otherwise be granted by the Court.
- (j) “Multiple Displacement Assessment” means an assessment performed by the Seminole Nation Social Services Department or independent contractor previously approved by the Court to determine what if any negative effects stem from numerous changes in guardianship.
- (k) “Parent” means a biological parent or a Traditional Seminole Parent as described in the definition of Seminole Traditional Parents.
- (l) “Permanent Guardian” means a guardian who has been granted long term guardianship status that is irrevocable unless the guardian is unsuitable as determined by the Court or the appointed guardian petitions for revocation.
- (m) “Physical Custody” means the physical custody and responsibility for the care of a child including the rights and duties to provide him/her with food, clothing, shelter, education, transportation, and emergency medical care.
- (n) “Power of Attorney” means a written legal document authorizing a person to act as another’s attorney-in-fact or agent for another person, property, or healthcare.
- (o) “Property” means property such as credits, savings and bank deposits, notes, bonds, proceeds from the sale of realty, and Children’s Trust Fund accounts, but does not include small monetary gifts in an amount less than \$500.00.
- (p) “Residual Parental Rights and Duties” means those inherent rights and duties remaining with the parents after legal custody or guardianship, or both, has been vested in another person, including but not limited to: the responsibility for support; the right to consent to customary adoption; and the right to reasonable visitation unless restricted by the Court. If no guardian has been appointed, the “residual parental rights and duties” also includes the right to consent to marriage, to enlistment in the Armed Forces, and to consent to major medical, surgical, or psychiatric treatment.
- (q) “Suitable” means individuals who are willing and able to provide a home environment that is fit, safe, and appropriate, as well as meets the purpose of this Act.
- (r) “Temporary Guardian” means a person, other than a parent, who is assigned by a court of law as having the duty and authority to provide physical care until the child turns eighteen(18) years of age or the Court grants a revocation, removal or termination of the guardianship.
- (s) “Traditional Arrangement” means a mutual authorization of child placement via a Seminole traditional practice. Examples include, but are not limited to, [example: the grandparents for purposes of Seminole teachings, i.e., sacred teachings, way-of-life, etc.]

(t) “Traditional Relatives” means those people within the child’s relevant intrinsic familial network according to Seminole tradition.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SUBCHAPTER I APPOINTMENT OF GUARDIAN

SECTION 403. Appointment of Guardian Generally.

- (a) The Court may appoint a guardian of the person or a guardian of the property, or both, for an individual if the Court determines that the individual is a minor child and such guardianship is in the best interest of the child.
- (b) In cases where the Court orders guardianship over the person, temporary guardianship shall be considered over permanent guardianship.
- (c) A guardian must wait six (6) months prior to motioning the Court to modify a Guardianship Order to reflect a change from temporary to permanent guardianship. However, the Court may consider a variety of exigent circumstances, including whether the minor child has already resided with the proposed guardian for a period of six (6) months or longer, in finding an exception to this general rule.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 404. Types of Guardianships.

Types of guardianships shall include:

- (a) Temporary Guardianship of the Person. The Court may appoint a temporary guardian, based upon successful petition, under such terms and conditions as the Court sets forth in the written Order. A temporary guardianship remains in effect until the child reaches the age of majority (18 years of age) or emancipates. A temporary guardianship may be terminated if the Court determines that it is in the best interests of the child to change custody from the temporary guardian to a new guardian or to return the child to the parent. The parent(s) and the child’s Traditional Relatives and Clan Members shall be granted liberal visitation rights unless deemed inappropriate by the Court.
- (b) Permanent Guardianship of the Person. The Court may appoint a permanent guardian, based upon a successful petition, for the child under such terms and conditions as the Court sets forth in the written Order. Permanent guardianship provides for permanent custody of the child to someone other than the parent(s), although there is no termination of the parental rights of the parents. There shall be a presumption of continued permanent guardianship in order to provide stability for the child. Permanent guardianship can only be terminated based upon the unsuitability of the permanent guardian. The parent(s) and the child’s Traditional Relatives and Clan Members shall be granted liberal visitation rights unless deemed inappropriate by the Court.

(c) Guardianship of Property. The Court may appoint a guardian of the property of a child under such terms and conditions as the Court sets forth in the written Order. The guardianship may cover all property until the child reaches eighteen (18) years of age or emancipates. It may be limited to only specific property or a specific legal action as set forth in the written order. A temporary or permanent guardianship of the person may also include guardianship of the child's property if set forth in the written Order.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SUBCHAPTER J

GUARDIANSHIP PREFERENCES, POWERS AND DUTIES; LIMITATIONS

SECTION 405. Guardianship Preferences and Order.

The Court shall consider the appointment of a guardian for a child from the following persons in the following order so long as such placement is in the best interests of the child:

- (a) Traditional Relatives, provided preference is given to suitable relatives who are Seminole Tribal members, with priority to parents, grandparents, siblings older than 21 years of age, aunts, uncles and cousins.
- (b) Other Traditional Relatives, at the discretion of the Court upon clear and convincing evidence of the relationship to the child.
- (c) Another Seminole family.
- (d) Another American Indian family that is a relative of one of the child's parents.
- (e) A suitable American Indian family.
- (f) Another family which can provide a suitable home for Seminole children.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 406. General Guardianship Duties and Powers.

- (a) Traditional Ways and Cultural Ties. Any appointment under this Act shall encourage a child to maintain cultural ties with the Nation, to be informed of the tradition and customs of the Nation, and to have the opportunity to learn the Seminole language.
- (b) Guardianship Duties. A guardian appointed by the Court shall:
 - (1) Use the degree of care, diligence, and good faith when acting on behalf of the child that an ordinarily prudent person exercises in his/her own affairs;
 - (2) Advocate for the child's best interests;
 - (3) Demonstrate the utmost degree of trustworthiness, loyalty, and fidelity in relation to the child;
 - (4) Notify the Court of any change in address of the guardian(s) or child;
 - (5) Make medical, dental, and psychiatric care decisions;

- (6) Consent to marriage, if the child is still a minor;
 - (7) Make decisions related to education;
 - (8) Make decisions related to mobility and travel;
 - (9) Consent to military service; and
 - (10) Consent or refuse visitation by relatives, subject to the limitation set forth in Section 418.
- (c) Guardianship Powers. A guardian appointed by the Court may be bestowed with the following powers:
- (1) The power to manage the child's estate.
 - (2) The power to seek child support.
 - (3) The power to seek a name change, if tradition and custom permits.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 407. Limitations Placed on the Guardian.

Limitation on Authority. When a guardian has been appointed by the Court for a child, the Court may grant legal custody and care of the child and management of his property until such child arrives at the age of eighteen (18), marries, is emancipated by the Court under this Act, or until the guardian is legally discharged; provided, however, that said guardian shall not have the authority without express written consent of the Court to dispose of any real or personal property of the child in any manner. The disposal of a minor child's real or personal property in any way shall subject said person(s) to contempt of court and/or to criminal and civil penalties or remedies provided by Seminole Nation law.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

**SUBCHAPTER K
GUARDIANSHIP PROCEDURES**

SECTION 408. Jurisdiction.

- (a) General Jurisdiction.
- (1) The Court shall have the authority to issue all orders necessary to ensure the safety of children within the Seminole community. This grant of civil jurisdiction to the Court authorizes the Court to exercise its power to issue and enforce subpoenas, issue orders of restriction, impose fines, adjudicate and punish contempt, order confinement, and issue other orders that may be deemed necessary and appropriate, in matters regarding children.
 - (2) Once the Court exercises its jurisdiction under this Act, its authority continues until such time as it may be terminated pursuant to paragraph c, below.

- (3) The Court may exercise jurisdiction over the following persons:
 - a. Enrolled members of the Nation under the age of eighteen (18) years.
 - b. Persons under the age of eighteen (18) who are eligible for enrollment in the Nation.
 - c. Indians, as defined in Section 402(i), who are under the age of eighteen (18).
 - d. Children of enrolled members of the Nation or other Indians, as defined in Section 402(i), including adopted children.

(b) Jurisdiction Over Adults.

(1) In any case in which a child has come within the jurisdiction of the Court, the Court shall have authority to exercise jurisdiction over adults to the extent necessary to make proper disposition of each case, including authority to punish for contempt either in or out of the Court's presence.

(2) Consent to Jurisdiction. Any adult living off the Nation's Trust Lands who obtains custody of a child, however designated, from the Court personally, shall be deemed to have consented to the jurisdiction of the Court for all purposes or actions in any way related to such custody of the child.

(3) Procedures Applicable to Adults. Except when specific procedures are otherwise specified in this Act, all matters concerning adults or the rights of any adult which come before the Court need not be handled according to procedures established by the Court, but rather may be handled in an informal manner as in other children's cases. The Court shall see to it that minimum standards of procedural fairness are observed.

(c) Termination of Continuing Jurisdiction. Jurisdiction obtained by the Court of a child under this Act shall continue until the child becomes eighteen (18) years of age, emancipates, or the guardianship order is revoked or terminated; at which time the continuing jurisdiction of the Court shall terminate.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 409. Initiating an Action.

(a) Petition for Guardianship.

(1) Who May File. A petition for guardianship may be filed either by the proposed guardian or by the child if at least sixteen (16) years of age.

(2) Contents of Petition. The petition for guardianship shall include the following:

- a. The full name, address, and tribal affiliation of the petitioner.
- b. The full name, sex, date and place of birth, residence, and tribal affiliation of the child.

- c. The basis for the Court's jurisdiction.
 - d. The relationship of the proposed guardian to the child.
 - e. The name and address of the person having legal custody of the child.
 - f. The type of guardianship requested.
 - g. To the best information and belief of the petitioner, a full description and statement of value of all property owned, possessed, or in which the child has an interest (if guardianship of property is requested).
 - h. The present conditions and circumstances that warrant the appointment of the guardian.
 - i. A list of people willing and able to become an interim successor guardian in the sudden event that the guardian cannot carry out his/her duties.
- (3) All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by a Clerk of the Court.
- (4) Petitioners must submit a signed Release of Information to permit the Court to conduct a criminal background check. The Court may consider charging a reasonable filing fee to cover the costs of conducting these checks.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 410. Service of Process.

- (a) Initial Summons — When Required. An initial summons is issued the first time a petition is filed.
- (1) After an initial petition is filed, the Court may deem it necessary to request further investigative reports in the petition, such as a home study of the proposed guardian. When the Court accepts the filed petition, the Court shall promptly issue a summons. The summons is to be personally served on the parent(s) of the child, the proposed guardian, and any other interested party. A summons is required whether or not a person appears voluntarily or files a written waiver of service with the Clerk of Court at or prior to the hearing.
 - (2) Any person can waive the time requirement to respond to the petition.
- (b) Summons — Content Requirements.
- (1) The summons shall contain the name of the Court, the title of the proceedings, and (except for published summons) a brief statement regarding the substance of the petition. A published summons shall state that a proceeding concerning the child (identified by initials and date of birth only) is pending in the Court and that an adjudication will be made. The summons shall require the person or persons who have legal custody of the child to appear personally. If the person or persons so summoned are not the parent(s) of the child, then the

summons shall also be issued to the parent(s) notifying them of the pendency of the proceedings and the time and place set for the hearing. No summons need be issued to a parent or parents whose parental rights have been relinquished.

(2) The summons issued by the Court shall conspicuously display the words:

NOTICE — VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDINGS FOR CONTEMPT OF COURT. SUBPOENAS: "THE FAILURE TO COMPLY WITH A SUBPOENA SHALL SUBJECT THE PERSON FAILING TO COMPLY TO THE CONTEMPT POWER OF THE COURT." THE COURT MAY FIND ANY PARTY TO THIS MATTER IN CONTEMPT OF COURT FOR FAILURE TO APPEAR AT A COURT HEARING OR FOR FAILURE TO FOLLOW COURT ORDERS.

(c) Summons — Other Persons. Summons may be issued to any person within the jurisdiction of the Court whose presence the Court deems necessary.

(d) Compulsory Attendance of Witnesses. A proposed guardian(s) shall be entitled to issuance of compulsory process for the attendance of a witness on his/her behalf. A *Guardian Ad Litem* shall be entitled to compulsory process for the attendance of witnesses on behalf of the child(ren). Should any person fail to attend a hearing after being properly served with process and be unable to provide the Court with an acceptable explanation, the Court may find such person in contempt pursuant to the Seminole Nation contempt provisions.

(e) Payment of Travel Expenses. The Court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing of a case under this Subchapter. A person or party must make a written request to the Court for such expense payment. The terms of travel reimbursement shall equal the amount that the Nation reimburses its employees under its employment law.

(f) Service of Summons.

(1) By Whom Served.

a. A designee selected by the Court shall make service of summons or process.

b. A service of summons may be made by delivering a copy to the person summoned. Provided, however, that parents of a child living together at their current place of residence may both be served personally by delivering to either parent copies of the summons, one copy for each parent.

c. Upon order of the Court for good cause shown, service may be accomplished by publishing the contents of the summons in the *Cokv Tvlvme* or another newspaper of general circulation in an area where the party was last known to be domiciled.

(2) Substituted Service — Jurisdiction. If the parent(s) required to be summoned by personal service under this Section cannot be found upon

reasonable search, the fact of the child's enrollment or eligibility for enrollment shall confer jurisdiction to the Court as to any absent parent(s).

(3) Time Requirement.

a. In the case of service of an initial petition where all parties reside in the State of Oklahoma, in order to be sufficient to confer jurisdiction on the person served, service must occur no less than ten (10) calendar days before the time set in the summons for the appearance.

b. In the case of service of an initial petition to any party residing outside the State of Oklahoma, in order to be sufficient to confer jurisdiction on the person served, service will occur within a reasonable time period before the time set in the summons for the appearance.

(g) Disobedience – Contempt.

Any person summoned as herein provided, who, without reasonable cause, fails to appear may be proceeded against for contempt of court pursuant to Seminole Nation law, and the Court may cause a bench warrant to be issued to produce such a person in Court.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 411. Additional Guardianship Procedures.

(a) Due to a potential conflict of interest, the Court shall not appoint Seminole Nation Social Services and/or Indian Child Welfare to play a role in cases under this Act, unless it is making a referral to Social Services for a child protection intake or for a Multiple Displacement Assessment as required under Section 425(f).

(b) Appointment of Guardian Ad Litem or Child Advocate. In its discretion, the Court may appoint a *Guardian Ad Litem* or *qualified Child advocate* to protect the best interests of the child.

(c) Guardianship Report.

(1) Upon the filing of a guardianship petition, the Court may immediately request that the *Guardian Ad Litem* or *Child Advocate* submit a guardianship report on the proposed guardian, successor guardians, and child.

(2) The guardianship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the child.

(3) No determination can be made on a Guardianship Petition until the Guardianship report has been completed and then submitted to and considered by the Court. The Guardianship Report shall be submitted to the Court no later than ten (10) days before the hearing. The Court may order additional reports as it deems necessary.

(d) Guardian Ad Litem and Child Advocate Duties.

The *Guardian Ad Litem and Child Advocate*, shall have the following duties, but are not limited to:

- (1) Interview the proposed guardian and report to the Court concerning the suitability of each individual interviewed to serve as guardian.
- (2) Meet with and observe the minor child in the proposed home setting and conduct assessment of the home.
- (3) Make written reports to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based. Written reports other than the Guardianship Report shall be filed with the Court at least three (3) days prior to the guardianship proceeding. Copies shall be provided to the other parties.
- (4) Attend all court proceedings related to guardianship.
- (5) Report to the Court on any matter that the Court requests.

(e) Statement of Acts by Proposed Guardian.

- (1) The proposed guardian shall submit to the Court a sworn and notarized confidential Statement of Acts. The Statement of Acts shall be submitted to the Court no later than ten (10) days before the hearing.
- (2) The purpose of the Statement of Acts is to allow the proposed guardian to provide answers to the below mentioned questions which will be utilized by the Court in making a determination of suitability. If the answer to any of the following questions is yes, then the proposed guardian is required to provide attachments to provide further details:
 - a. Whether the proposed guardian, or anyone living in the proposed guardian's home, is currently charged with or has been convicted of a crime.
 - b. Whether the proposed guardian, or anyone living in the proposed guardian's home, is required to register as a sex offender.
 - c. Whether the proposed guardian, or anyone living in the proposed guardian's home, has had a restraining order or protective order filed against him/her in the last ten (10) years.
 - d. Whether the proposed guardian, or anyone living in the proposed guardian's home, has been charged with, arrested for, or convicted of any form of child abuse, neglect, or molestation.
 - e. Whether the proposed guardian, or anyone living in the proposed guardian's home, has had any reports alleging any form of abuse, neglect, molestation made to any agency charged with protecting children (e.g., Oklahoma Child Protective Services, Seminole Nation Social Services) or

any other law enforcement agency regarding him/her or anyone living within the proposed guardian's home.

f. Whether the proposed guardian has filed for or received protection under the federal bankruptcy laws.

g. Whether the proposed guardian has ever had a license, certificate, permit, or registration required by the laws of any state for the practice of a profession or occupation suspended or revoked.

h. Whether the proposed guardian has ever been removed as a guardian in any other case.

i. Whether the proposed guardian, or anyone living in the proposed guardian's home, has habitually used any illegal substances or abused alcohol.

j. Whether the proposed guardian, or anyone living in the proposed guardian's home, has been charged with, arrested for, or convicted of a crime involving illegal substances or alcohol.

k. Whether the proposed guardian, or anyone living in the proposed guardian's home, has a social worker, parole officer, or probation officer assigned to him/her.

l. Whether the proposed guardian, or anyone living in the proposed guardian's home, is receiving services from a psychiatrist, psychologist, or therapist for a mental health-related issue.

m. Whether the proposed guardian, or anyone living in the proposed guardian's home, suffers from a mental illness.

(3) Failure to provide such statement, or failure to provide truthful answers within the statement, shall subject said person(s) to contempt of court, as it will impair the ability of the Court to establish findings of fact, and ultimately interfere with the administration of justice.

(f) Written Consent. Any person who has legal custody of the child may consent to a guardianship. Such consent must be in writing and notarized or witnessed by a clerk of the Court, with the original being filed with the Court.

(g) Withdrawal of Consent.

(1) Any consent given under subsection e above may be withdrawn by the person who gave consent at any time prior to the hearing of the petition. No reason need be stated and no hearing need be held on such withdrawal. All withdrawals must be in writing and notarized or witnessed by a Clerk of the Court, with the original being filed with the Court.

(2) If consent is withdrawn after the hearing of the petition and the appointment of a guardian, then the Court shall order a Best Interests Study to be conducted. The *Guardian Ad Litem* shall perform the study and submit a report with his/her findings with regards to the best interests of the child. The Court shall then take this study into consideration in making its decision.

SECTION 412. Guardianship Hearing Procedures.

- (a) Time of Hearing. A Guardianship Hearing shall be held within forty-five (45) days of filing of a Guardianship Petition.
- (b) Purpose of Hearing. The Court shall conduct the hearing to determine if it is in the best interests of the child to be placed with the petitioner(s), and whether the proposed guardian is suitable to be appointed.
- (c) Rights of Parties. During the hearings the Court shall advise the party(ies) of the following basic rights:
 - (1) The reason for the hearing.
 - (2) Right to counsel at their own expense. The Court shall permit one continuance to secure counsel, unless reasonable efforts are shown to the Court that the parties are actively seeking counsel.
 - (3) Right to confront and cross-examine those appearing against them.
 - (4) Right to present and subpoena witnesses.
 - (5) Right to substitution of judge. The parties shall be notified that a request for substitution of judge must be made before the end of the Guardianship Hearing or this right will be deemed waived unless good cause is shown at a later point in the proceedings.
 - (6) Right to a jury trial.
- (d) Burden of Proof. The petitioner(s) maintains the burden of proving that he/she is suitable and that the guardianship is in the best interests of the child.
- (e) Evidence and Testimony. In determining the best interests of the child and the suitability of the proposed guardian, the Court shall examine each of the following:
 - (1) Validity of written consent.
 - (2) Length of time of the child has resided with the petitioner(s).
 - (3) Special conditions of the child.
 - (4) Parent communication with the child.
 - (5) Minor's consent to guardianship dependent upon maturity.
 - (6) Any report submitted by the *Guardian Ad Litem* or *Child Advocate*.
 - (7) The Statement of Acts submitted by the proposed guardian.
 - (8) Order of preference of placement.
- (f) Closed Hearing. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's Traditional Relatives, and other persons determined to be appropriate by the Court shall be permitted to attend.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 413. Disposition of Petition.

(a) Denial of Petition.

(1) If the Court finds that the guardianship will not be in the child's best interest, or that all of the requirements of this Act have not been met, it may deny the petition and make any other Order it deems necessary for the child not inconsistent with this Act.

(2) If the Court determines that the proposed guardian is unsuitable, then the Court shall request that a petition proposing a suitable guardian be filed which may include individuals from the list of successor guardians found in the Guardianship Petition or other relatives. The Court shall set a date for a hearing to be held within thirty (30) days, and may require the *Guardian Ad Litem or Child Advocate* to investigate the suitability of a new proposed guardian.

(b) Appointment of Guardian. If the Court is satisfied that the guardianship will be in the child's best interest, the requirements of the Act have been met, and the proposed guardian is suitable, then it may appoint the petitioner(s) as guardian(s) and issue an Order in accordance with Subchapter E of this Chapter.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SUBCHAPTER L
COURT ORDERS

SECTION 414. Court Orders Generally.

(a) The Court shall set forth, in the written Guardianship Order, the findings of fact that supports the decision of the Court.

(b) In accordance with the best interests of the minor child, the Court shall set forth, in the written Guardianship Order, which powers will be granted to the appointed guardian.

(c) The Court shall set forth, in the written Guardianship Order, any limitations of authority to be placed on the appointed guardian.

(d) The Court shall set forth, in the written Guardianship Order, all duties that the appointed guardian will have.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 415. Management of Property.

(a) In the event that any guardian receives any property (e.g., real property, money, or funds) of any child while acting as guardian, before taking and receiving into custody

such money or funds, the Court may require of such person a bond with sufficient surety to be approved by the Court and in such sum as the Court shall order, conditioned that the guardian will faithfully execute the duties of his/her trust. The following conditions shall form the part of such bond without being expressed therein.

- (1) To make an inventory of the property of the child that comes into his/her possession or knowledge and to return the same within such time as the Court may order.
 - (2) To discharge and manage the property according to the law and in the best interests of the child, and faithfully discharge his trust in relation thereto, and also in relation to the care, custody, and education of the child.
 - (3) To render an account (Court created form) of the property of the child and all proceeds or interests derived therefore annually and at such other times as the Court directs.
 - (4) At the expiration of the child's trust, the guardian shall settle the child's accounts with the Court, with the child if of the age of majority, or the child's legal representative. The guardian shall deliver all of the property to the person who is legally entitled to possession.
 - (5) The funds of any child must be used by his/her guardian solely for the support and education of such child, and shall be expended by the guardian in a reasonable manner according to the circumstances of the child, and in such manner as can reasonably be afforded according to the income and estate of the child.
- (b) If determined to be appropriate by the Court, the written Order may set forth that the child's property may not be used for the child's care, but rather to be managed for the child until the child reaches the age of eighteen (18) or is emancipated by the Court.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 416. Annual Guardianship Report.

Guardians of the person shall file an annual report (Court created form) on or about the anniversary of the Guardianship Order or at such other time as is ordered by the Court. The purpose of said report is to update the Court on the status of the guardianship and the well-being of the child.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 417. Child Support.

The Court may order child support to the person(s) to whom guardianship is granted under this Chapter if sought by the guardian(s). Guardian(s) of the child must use disbursements for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of said funds for any purposes other than that described in this Act shall subject said person(s) to contempt of court and to criminal and civil

penalties or remedies provided by Tribal law. The Court shall order payments to be made directly to the guardian. The guardian and payor shall be responsible for maintaining adequate records of payments made and received. The Court may review the history of payments periodically upon motion of the guardian.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 418. Visitation Rights.

The parent(s) and the child's Traditional Relatives and Clan Members shall be granted liberal visitation rights unless deemed inappropriate by the guardian or the Court.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 419. Co-Guardians.

If the Court appoints a guardian of the person or a guardian of the estate, it may also consider appointing the guardian's spouse as a co-guardian in an attempt to better protect the best interests of the child. In addition to having similar guardianship powers, the co-guardian will be subject to all the limitations and will have all of the duties of the petitioning guardian.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 420. Name Change.

A guardian(s) could request the child's name to be changed pursuant to a determination from the Court that tradition and custom permits such change under the circumstances of the case.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

**SUBCHAPTER M
MODIFICATION, REVOCATION AND TERMINATION**

SECTION 421. Judgments Inoperative After Age 18.

No judgment, Order, or decree of the Court shall be in effect after the child becomes eighteen (18) years of age.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 422. Motions to Modify Guardianship.

- (a) The Court may modify any Order or decree, but no modification of an Order shall be made until there has been a hearing after due notice to all persons concerned.

(b) The Court may hold a hearing to modify a Guardianship Order at any time upon the motion of any of the following:

- (1) The child age sixteen (16) years of age or older.
- (2) The child's parents.
- (3) The guardian of the child.
- (4) The *Guardian Ad Litem or Child Advocate*.

(c) The motioning party bears the burden of proving that modification of the Guardianship Order is in the best interests of the child.

(d) The motioning party may seek a modification of a variety of things, including, but not limited to:

- (1) Child Support.
- (2) A name change.
- (3) The power to manage the property of the child.
- (4) A change from Temporary to Permanent Guardianship.

(e) Best Interests Study. A Best Interests Study must be filed with the Court any time a motion is filed for modification of a Guardianship Order. At the direction of the Court the *Guardian Ad Litem or Child Advocate* shall perform the study and submit a written report with his/her findings three (3) days prior to the hearing.

(f) Notice of Modification. Notice of an Order modifying a guardianship shall be given to the parent(s), guardian(s), and, when appropriate, to the child.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 423. Motions to Revoke Guardianship.

(a) Revocation is the voluntary relinquishment of a guardianship by a guardian. The guardianship itself continues with a successor guardian taking over the role of guardian.

(b) The Court may revoke any Order or decree, but no revocation of an Order shall be made until there has been a hearing after due notice to all persons concerned.

(c) The Court may hold a hearing to revoke a Guardianship Order at any time upon the motion of the guardian(s).

(d) The motioning party bears the burden of proving that revocation of the guardianship is in the best interests of the child.

(e) Best Interests Study. A Best Interests Study must be filed with the Court any time a motion is filed for revocation of a guardianship. At the direction of the Court the *Guardian Ad Litem or Child Advocate* shall perform the study and submit a written report with his/her findings three (3) days prior to the hearing.

(f) Notice of Revocation. Notice of an Order revoking a guardianship shall be given to the parent(s), guardian(s), and, when appropriate, to the child.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 424. Motions to Remove Guardian.

- (a) Removal is the process to remove a guardian from his/her role due to his/her role due to his failure to perform the guardian's duties as set forth in this Act. The guardianship itself continues with a successor guardian taking over the role of guardian.
- (b) The Court may order the removal of a guardian for cause, but no removal shall be made until there has been a hearing after due notice to all persons concerned.
- (c) The Court may hold a hearing to remove a guardian at any time upon the motion of any of the following:
 - (1) The child age sixteen (16) years of age or older.
 - (2) The child's grandparents or parent(s).
 - (3) The child's Traditional Relatives having a legitimate interest in the particular case.
 - (4) The *Guardian Ad Litem or Child Advocate*.
 - (5) Upon motion of the Court.
- (d) The motioning party bears the burden of proving that the guardian is or has been neglecting the child and/or estate and is or has been refusing or is unable to perform the guardian's duties. The motion must include factual allegations of neglect or failure to fulfill the guardian's duties.
- (e) Best Interests Study. A Best Interests Study must be filed with the Court any time a motion is filed for removal of a guardian. At the direction of the Court the *Guardian Ad Litem or Child Advocate* shall perform the study and submit a written report with his/her findings three (3) days prior to the hearing.
- (f) Notice of Removal. Notice of an Order removing a guardian shall be given to the parent(s), guardian(s), and, when appropriate, to the child.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 425. Motions to Terminate Guardianship Orders.

- (a) Termination is the process whereby the entire guardianship is terminated. This may occur upon the child reaching the age of majority, the child becoming emancipated by Court Order, or a motion to terminate is granted.
- (b) An Order granting a guardianship shall be for an indeterminate period.
- (c) The Court, upon motion of a party seeking termination of a Guardianship Order and being satisfied all parties were properly notified of the motion, may schedule a hearing to consider termination of its Order.

(d) The Court may hold a hearing to terminate a Guardianship Order at any time upon the motion of any of the following:

(1) The child age sixteen (16) years of age or older.

(2) The child's parent(s).

(3) The *Guardian Ad Litem* or *Child Advocate*.

(e) Termination of a Temporary Guardianship of the Person. The motioning party bears the burden of proving that termination of the temporary guardianship is in the best interests of the child.

(f) Termination of a Permanent Guardianship of the Person. The motioning party bears the burden of proving that the permanent guardian is unsuitable. The motion must set forth the factual allegations that support a finding of unsuitability.

(g) Best Interests Study. A Best Interests Study must be filed with the Court any time a motion is filed for termination of a guardianship. At the direction of the Court the *Guardian Ad Litem* or *Child Advocate* shall perform the study and submit a written report with his/her findings three (3) days prior to the hearing.

(h) Notice of Termination. Notice of an order terminating guardianship shall be given to the parent(s), guardian(s), and, when appropriate, to the child.

(i) Visitation Plan. The *Guardian Ad Litem*, *Child Advocate*, or the Court upon its own motion, may deem a visitation plan is necessary if a child has been in a lengthy guardianship. The purpose of said visitation plan will be to allow for a smooth transition from the guardian's home back into the parent's home.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SECTION 426. Successor Guardian.

(a) Appointment of an Interim Successor Guardian in the Event of Guardian's Death or Sudden Incapacitation. The Court shall select a successor guardian, from the list of possible successor guardians provided in the Guardianship Petition, upon the death or sudden incapacitation of the guardian. The interim successor guardian shall have the same powers and duties as the appointed guardian, until a new guardian can be appointed pursuant to the procedures described below.

(b) If a guardian dies, is removed by order of the Court, or revokes, the Court, on its own motion or upon receiving a motion of any interested party, shall schedule a Guardianship Hearing, so as to appoint a competent and suitable person as a successor guardian.

(c) Procedures. The petition for appointment of a successor guardian shall be heard in the same manner and be subjected to the same requirements as provided in this Chapter for an original appointment of a guardian.

(d) Scheduling. Naming of a successor guardian must occur simultaneously with the revocation or removal of the current guardian, unless a suitable guardian cannot be found,

at which point the Court shall immediately refer the matter to Seminole Nation Social Services for an intake.

(e) Appointment of Successor Guardian. If the Court determines removal is necessary to protect the best interests of the child, then it shall appoint a successor guardian. The successor guardians will be considered from the list provided in the original petition and from the Guardianship Report submitted by the *Guardian Ad Litem or Child Advocatae*.

(f) Multiple Displacement Assessment. If the Court determines that the best interests of the child are being ignored by multiple guardianships, then it may refer the case to Seminole Nation Social Services to conduct a Multiple Displacement Assessment. The assessment shall not reflect negatively on the tradition and custom of families placing their children with extended Traditional Relatives.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]

SUBCHAPTER N APPEALS

SECTION 427. Court Appeals.

(a) Any interested party to the Court proceeding may appeal a final Court Order on a specific legal issue.

(b) Procedure. An appeal to the Nation's Supreme Court may be filed from any Order, decree, or judgment of the Court. The Notice of Appeal must be in writing and filed within sixty (60) days from the entry of the Order, decree, or judgment appealed from.

(c) Record. For purpose of appeal, a record of proceedings shall be made available to the child, his/her parent(s), guardian(s), the child's counsel, and others upon Court Order. Costs of obtaining this record shall be paid by the party seeking the record.

(d) Stay Pending Appeal. The pendency of an appeal shall stay the Order or decree appealed from in a guardianship. Where the Order or decree appealed from directs a change of guardianship of a child, the appeal shall be heard and decided at the earliest practicable time. The name of the child shall not appear on the record of appeal.

[HISTORY: Ordinance No. 2012-09, July 28, 2012]